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EXTRATERRITORIAL OPERATION AND EFFECT
OF CONFISCATORY DECREES OF THE
SOVIET GOVERNMENT

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In two recent cases¹ the Court of Appeals of New York considered the question as to what operation or effect is to be given by American courts to decrees of the Russian Soviet government ("Russian Socialist Federated Soviet Republic"), where the decrees intend the confiscation of private property—confiscations on a large scale having been actually made under several such decrees within the territory over which the Soviet regime has held sway by virtue of paramount force for nearly eight years—the government of the United States having steadfastly refused to accord recognition to the Soviet government as either the *de facto* or *de jure* government of that country.² Aside from the interest which the question arouses in the mind of those interested in the point of international law involved, the effect which the American courts give such decrees is of tremendous interest to American bankers,³ insurance companies,⁴ manufacturers and investors therein,⁵ and others, as well as the agents or agencies in this country of not a few Russian corporations which are, or were, engaged in business in this country.⁶

Pursuant to its avowed purpose of "relieving the workingman from the oppression of capital," the Soviet government, shortly after having made its coup d'état in November, 1917, promulgated a number of radical and far-reaching decrees, the ostensible purpose of which was to make state monopolies of a number of the more important industries, among which may be mentioned the shipping

¹ *Sokoloff v. National City Bank* (1924) 239 N. Y. 158, 37 A. L. R. —, 145 N. E. 917, and *Fred S. James & Co. v. Second Russian Ins. Co.* (1925) 239 N. Y. 248, 37 A. L. R.—, 146 N. E. 369. See also the several recent cases decided by inferior courts of that state cited *infra*.

² An interesting discussion of the refusal of our government to recognize the soviet regime will be found in the opinion of Mr. Justice Andrews in *Russian Socialist Federated Soviet Republic v. Cibrario* (1923) 235 N. Y. 255, 139 N. E. 259.

³ See, for example, the situations presented in *Gurdus v. Philadelphia Nat. Bank* (1922) 273 Pa. 110, 23 A. L. R. 1227, 116 Atl. 672, and *Sokoloff v. National City Bank*, *supra*, note 1.

⁴ See, *Hennenlotter v. Norwich Union Fire Ins. Soc.* (1924) 124 Misc. 626, 207 N. Y. Supp. 588.

⁵ See, *Bourne v. Bourne* (1924) 209 App. Div. 419, 204 N. Y. Supp. 866

⁶ See, *Fred S. James & Co. v. Second Russian Ins. Co.*, *supra*, note 1.

business, insurance, banking, woodworking, etc. As heretofore suggested, the wording of the decrees states their object to be to effect fundamental economic reforms, but it is not improbable that the fiats were actually issued to give legal color to contemplated seizures of private property needed to produce funds to maintain the government established after the overthrow of the short lived Provisional government of Kerensky; this is an omnipresent act of governments established through revolutions, as may be seen by a perusal of cases cited in the note, arising out of confiscations not only by the "comic opera" governments of Central and South America, but even nearer home.⁷ At least, the Soviet government expeditiously effected its economic "reforms" by issuing decrees, under the hand of Lenin, ordering the seizure of the properties of the industries affected, declaring them to be the property of the state, dissolving the corporations or companies operating them, and declaring them to be nationalized⁸ or amalgamated into departments of state.⁹

With the international business interests conducted in Russia and the large amount of business transacted in this country and elsewhere outside of Russia by Russian insurers, bankers, etc., the effect of such decrees was instantaneously and stunningly felt. And hardly had this blow been dealt in the English and American foreign business circles than the courts of those countries were asked to determine the effect to be given the decrees abroad.¹⁰ The duty of considering, with a view to legality, decrees so flagrantly violative of Anglo-American economic and legal concepts, is not a pleasant one for the judges; but it is a duty.¹¹

In giving, or refusing to give, effect to a decree of a foreign government, a consideration of prime importance is whether the

⁷ 1 Moore, Int. Law Dig. 56, *et seq.* As to the sovereign right to confiscate private property, see 2 Wharton's Int. Law Dig. §248 (pp. 709, *et seq.*).

⁸ See annotation in 37 American Law Reports as to the extraterritorial effect of the nationalization of foreign corporations.

⁹ A full translation of several such decrees may be found in the judgments of their Lordships in the case of *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse* [1925] A. C. 112, 40 Times L. R. 837, 68 Sol. Jo. 841, 93 L. J. K. B. N. S. 1084, 1098—H. L.

¹⁰ *Aksionairnoye Obschestvo v. Sagor* [1921] 1 K. B. 456 (judgment reversed by the Court of Appeal in [1921] 3 K. B. 532, 11 B. R. C. 666, 90 L. J. K. B. N. S. 1202, 125 L. T. N. S. 705, 37 Times L. R. 777, 65 Sol. Jo. 604) seems to be the first case in which the question arose; the case is stated elsewhere in the note.

¹¹ "Revolutions and their anarchical legislation do produce results difficult to fit in with the legislation of orderly States. The judges can only endeavor to apply settled principles; legislation, or abstention by the Sovereign from recognition of anarchical States, must do the rest." Scrutton, L. J., in *Banque Internationale de Commerce v. Goukassow* [1923] 2 K. B. 693—C. A.

government issuing the decree is recognized by the political department of the government of the forum, for it is a rule that the courts must adopt the views of the office of foreign affairs;¹² otherwise, the courts would, perhaps, commit the diplomatic corps or policy, and perhaps give rise to a cause of war. For it is a firmly established principle of international law as interpreted by the courts of this country and England that, while the courts can refuse to recognize as valid the laws or decrees of an unrecognized foreign government, and may treat them as wholly without extraterritorial effect,¹³ the laws of a foreign nation which has been accorded recognition by the foreign office must be recognized as valid and given effect,—at least, to the extent to which the jurisdiction of the law-enacting sovereignty extends,—no matter what the courts think of the morality or justice of the laws.¹⁴ And this is true even though the

¹² 1 Moore, Int. Law Dig. § 75; *Oetjen v. Central Leather Co.* (1918) 246 U. S. 297, 62 L. ed. 726, 38 Sup. Ct. Rep. 309; *Aksionairnoye Obschestvo v. Sagor*, *supra*, note 10.

¹³ *The Nueva Anna* (1821) 6 Wheat. 193, 5 L. ed. 239; *Sokoloff v. National City Bank*, *supra*, note 1; *Fred S. James & Co. v. Second Russian Ins. Co.*, *supra*, note 1; *Bourne v. Bourne* (1924) 209 App. Div. 419, 204 N. Y. Supp. 866; *Joint Stock Co. of Volgakama Oil & Chemical Factory v. National City Bank* (1924) 210 App. Div. 665, 206 N. Y. Supp. 476; *Russian Reinsurance Co. v. Stoddard* (1925) 211 App. Div. 132, 207 N. Y. Supp. 574; *Hennenlotter v. Norwich Union Fire Ins. Soc.* (1924) 124 Misc. 626, 207 N. Y. Supp. 588; *Aksionairnoye Obschestvo v. Sagor* [1921] 1 K. B. 456, judgment reversed by the Court of Appeal (vide note 10, *supra*) which, however, approved the holding on the facts; *King of Two Sicilies v. Willcox* (1851) 1 Sim. N. S. 301, 61 Eng. Reprint, 116, 19 L. J. Ch. N. S. 488, 14 Jur. 751. Compare: statement of Fuller, Ch. J., in *Underhill v. Hernandez* (1897) 168 U. S. 250, 42 L. ed. 456, 18 Sup. Ct. Rep. 83; *O'Neill v. Central Leather Co.* (1915) 87 N. J. L. 552, L. R. A. 1917 A, 276, 94 Atl. 789. "If a foreign government, or its sovereignty, is not recognized by the Government of this country the Courts of this country either cannot, or at least, need not, or ought not, to take notice of, or recognize such foreign government or its sovereignty." Roche, J., in *Aksionairnoye Obschestvo v. Sagor* [1921] 1 K. B. 456 (refusing to accord extraterritorial effect to a confiscatory decree promulgated by the Soviet Government). See *The Nueva Anna*, *supra*, to the effect that the courts cannot accord recognition of validity to a confiscatory act of an unrecognized government. Similarly, it has been said by an inferior court of New York that our government never having recognized the Soviet government, certain decrees or edicts pronounced by it, by which the confiscation of much property was intended to be confiscated, had "no force or effect" and were of no importance in the case "except as interesting facts rendering to fix dates." *Bourne v. Bourne*, *supra*.

¹⁴ See among the numerous cases announcing this rule: *American Banana Co. v. United Fruit Co.* (1909) 213 U. S. 347, 53 L. ed. 826, 29 Sup. Ct. Rep. 511, 16 Ann. Cas. 1047; *Oetjen v. Central Leather Co.* (1918) 246 U. S. 297, 62 L. ed. 726, 38 Sup. Ct. Rep. 309; *Monte Blanco Real Estate Corp. v. Wolvin Line* (1920) 147 La. 563, 85 So. 242; *Molina v. Comision Reguladora* (1918) 92 N. J. L. 38, 104 Atl. 450; *Murray v. Vanderbilt* (1863) 39 Barb. 140 (following *Hamilton v. Accessory Transit Co.* (1857) 26 Barb. 46; *De La O v. Consolidated Kansas City Smelting & Ref. Co.* (1918)—Tex. Civ. App.—, 202 S. W. 1027; *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, *supra*, note 9; *Aksionairnoye Obschestvo v. Sagor*, *supra*, note 10; *Wright v. Nutt* (1788) 1 H. Bl. 136, 126 Eng. Reprint, 83; *White, Child &*

foreign sovereign confiscates the property of its nationals, or even citizens of the forum, and affords them no redress,¹⁵ although the rule was not applied in two early English cases.¹⁶ It makes no difference ordinarily whether the foreign government has been recognized as the *de jure* government or only as the *de facto* government.¹⁷ Furthermore, recognition is retroactive in this respect, validating the prerecognition acts of the foreign government.¹⁸

Bearing these facts and principles in mind, we may turn to a consideration of the cases of a present interest.¹⁹

Beney v. Eagle, S. & B. Dominions Ins. Co. (1922) 127 L. T. N. S. 571, 38 Times L. R. 616—C. A. The Lord Chancellor speaking in *Wright v. Nutt*, *supra*, of the law enacted by the Georgia Legislature shortly after the Declaration of Independence, attainting the Tory Governor and declaring a confiscation of his property: "It may be a question for private speculation, whether such a law made in Georgia was a wise or an improvident one, whether a barbarous or civilized institution. But here we must take it as the law of an independent country, and the laws of every country must be equally regarded by Courts of Justice here, whether in private speculation they are wise or foolish." To a similar effect is the following statement from the judgment of Warrington, L. J., in the *Sagor Case*, *supra*, considering the effect to be given by an English court to a decree of the Soviet government, which had been recognized by England: "It is well settled that the validity of the acts of an independent sovereign government in relation to property and persons within its jurisdiction cannot be questioned in the courts of this country: 'Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the [validity of] acts of another done within its own territory.' Per Clarke, J., delivering the judgment of the Supreme Court of the United States in *Oetjen v. Central Leather Co.* [supra]." See also *Suits against Foreigners* (1794) 1 Ops. Atty. Gen. 45.

¹⁵ Cases *supra* under note 14. See especially the judgment of the Lord Chancellor in *Wright v. Nutt* (1788) 1 H. Bl. 136, 126 Eng. Reprint, 83.

¹⁶ See *Wolff v. Oxholm* (1817) 6 Maule & S. 92, 105 Eng. Reprint, 1177, 18 Revised Rep. 313; *Peru v. Dreyfus Bros.* (1888) L. R. 38 Ch. Div. 348, 57 L. J. Ch. N. S. 536, 58 L. T. N. S. 433, 36 Week. Rep. 492. See also the case of *Ogden v. Folliott* (1790) 3 T. R. 726, 100 Eng. Reprint 825, which is, however, easily distinguished, it being referable to the familiar principles of private international law that laws do not operate *ex proprio vigore* extraterritorially and that "the courts of no country execute the penal laws of another."

¹⁷ See judgment of Bankes, L. J., of the Court of Appeal, in the *Sagor Case*, *supra*, note 10. See also as to this an article, *So-Called "De Facto" Recognition*, 31 Yale L. J. 469, where the author, a Barrister of the Inner Temple, concludes that the distinction between "Recognition Simply and De Facto Recognition" has no foundation in fact and rests upon a misapprehension.

¹⁸ *Vide*, cases *supra*, note 14. Thus, President Wilson having in 1917 recognized the Carranzaist or Constitutional Government of Mexico as the *de jure* government of that country, the courts of this country recognized as valid governmental acts of that government confiscations of private property made by Villa and other general officers acting under Carranza prior to 1917. See *Oetjen v. Central Leather Co.*, *supra*, note 14.

¹⁹ For a full discussion of the question under consideration, see annotation in 37 American Law Reports (appended to the case of *Fred S. James & Co. v. Second Russian Ins. Co.* (239 N. Y. 248) on the subject, "Extraterritorial effect of confiscations of property and nationalization of corporations."

In June, 1917, one Sokoloff paid to the National City Bank of New York in New York \$30,225 upon its promise to open an account in his favor in its branch in Petrograd, Russia, and to repay him this sum in rubles at such times and in such amounts as he might demand. The account was opened, and Sokoloff drew upon it, until in November, 1917, and February, 1918, checks were presented but dishonored, although he had a balance remaining of \$28,365. Thereafter Sokoloff sued the bank in New York, and the defendant made the defense that in November, 1917, a revolution took place in Russia, after which the Soviet government was formed; that that government in the same month decreed the "nationalization" of all private jointstock banks organized under the laws of Russia or operating therein, took possession of them by force and decreed that they be merged in the State Bank of Russia, took possession of their assets, and assumed their liabilities; that the defendant's assets in Russia were confiscated, the accounts of depositors being credited to a revolutionary tax; that the plaintiff, Sokoloff, was aware of the probability of future political and governmental changes in Russia, and that it was contemplated by the parties that the agreement should be performed in Russia and should be governed by the laws of that country; in short, that Sokoloff's Russian deposit was seized and his title divested, and the bank's liability discharged. The case, *Sokoloff v. National City Bank*,²⁰ finally reached the Court of Appeals of New York, which affirmed the judgment of the court of the appellate division for the plaintiff.²¹ The decision, given in an opinion by Mr. Justice Cardozo, is based upon the rule, stated above, that English and American courts do not feel themselves bound to accord the weight of law to the decrees of unrecognized governments, or, as expressed in the opinion, "acts or decrees, to be ranked as governmental, must proceed from some authority recognized as a government de facto." Thus, the Court of Appeals, in refusing to accord the weight of law to the decrees invoked in defense, regarded them as wholly without legal effect in this country, and sustained the bank's liability without regard to the fact that the actual paramount political force of the place where the obligation was payable had liquidated the bank's liability.²²

²⁰ *Supra*, note 1.

²¹ *Sokoloff v. National City Bank* (1924) 208 App. Div. 627, 204 N. Y. Supp. 69.

²² In so holding the learned court observed that courts of high repute have held that confiscation by a government to which recognition has been refused has no other effect than seizure by bandits or other lawless bodies, and said that "Juridically, a government that is unrecognized may be viewed as no government at all, if the power withholding recognition chooses thus to view it."

But the New York court was careful in so holding to observe that it would be hazardous to say that the rule of decision (vide statement in note 22) is not subject to exception under pressure of some insistent claim of policy or justice, but should be subject to "self-imposed limitations of fairness." This suggestion of a limitation to the rule, while sustained by no decision²³ and opposed by judicial utterances made by other courts,²⁴ is without doubt a sound dictum, sustained by both reason²⁵ and analogy.²⁶ In respect of confiscatory decrees, exceptions may be taken to the rule in favor of the victim of the spoliation, but the rule may perhaps be applied with full rigor against the spoliator.²⁷ The limitation suggested to the operation of the rule is pure *obiter*, however, the facts of the case not calling for any exception of the rule. The bank was not a bailee of the deposit,²⁸ and the assets of the bank were not earmarked to Sokoloff's use, were not a physical object, but a mere chose in action; there was an executory contract by the bank to respond to the depositor's written demands for rubles, which the bank refused to perform. Nor was the defendant corporation's legal liability affected by the attempt of the Soviet government to terminate its existence—only the sovereignty creating a corporation can extinguish its creature, though a foreign sovereign within whose domain it has extended its activities can terminate them there; nor was the deposit made upon the security of the bank's assets in Russia; and, as to the assumption by the

²³ See, however, *Gurdus v. Philadelphia Nat. Bank* (1922) 273 Pa. 110, 23 A. L. R. 1227, 116 Atl. 672.

²⁴ See *The Nueva Anna*, *supra*, note 13, and the quotation of a judge of the court of Kings Bench, in note 13, *supra*.

²⁵Effect may at times be due to the ordinances of foreign governments which, though formally unrecognized, have notoriously an existence as governments in fact, e. g., the present government of Russia which has actually held the reigns of government in that country, with or without the consent of the governed, since November, 1917, and has been accorded *de jure* recognition by England, France, Japan, China, and many other countries. It is true, as observed in the opinion in the *Sokoloff Case*, that consequences appropriate enough when recognition is withheld on the ground that rival factions are still contending for the mastery (e. g., the situation in Mexico from 1912 to 1915, or later) may be in need of readjustment before they can be fitted to the growing practise of withholding recognition whenever it is thought that a government, though functioning unhampered, is, because of its policies, unworthy of reception into the society or "family" of nations.

²⁶ *Vide, Williams v. Bruffy* (1878) 96 U. S. 176, 24 L. ed. 716, and 1 Moore, Int. Law Dig. 56, et seq.

²⁷ See *Russian Socialist Federated Soviet Republic v. Cibrario* (1923) 235 N. Y. 255, 139 N. E. 259, not a case involving a confiscation, and see also the holding of the court of Kings Bench in the *Sagor Case*, *supra*, note 10.

²⁸ Had the defendant been a bailee, surrender of the subject of the bailment to an overwhelming force would, it seems, have excused the defendant even though the force confiscating the subject acted wholly beyond the pale of law.

State Bank of Russia of the dissolved bank's liabilities, there was in the case no suggestion of a novation whereby the State Bank was substituted as debtor; and, the bank's assets having already been confiscated at the time the decree was passed confiscating the accounts of depositors as a revolutionary tax, the subsequent decree was held not to operate to the benefit of the bank.²⁹ The doctrine of frustration, invoked by the defendant, was held to have no application to the case, since the action was for restitution and not damages; and it was held not to have been shown that the parties intended to have the obligation depend upon events in Russia.

The rule of decision applicable to confiscatory decrees of the Soviet government announced in *Sokoloff v. National City Bank*, *supra*, has been approved and applied by the same court, in *Fred S. James & Co. v. Second Russian Ins. Co.*,³⁰ and applied by inferior courts in that state in several cases,³¹ and substantially the same rule

²⁹ As to this point the court said: "Certain we think it is that a decree of confiscation directed against depositors does not reduce the liabilities of a bank which has already yielded up its assets in virtue of a decree of confiscation directed against itself. In such a situation the later decree, if it is to be given any effect at all, must speak the voice of a power recognized by us as sovereign."

³⁰ (1925) 239 N. Y. 248, 37 A. L. R.—, 146 N. E. 369. The rule was applied in this case in upholding the liability of a Russian corporation upon certain reinsurance contracts to the American assignee of an English insurance company which had reinsured a number of risks with the defendant Russian corporation, which, while engaged in business in New York, sought to avoid liability through invoking Soviet decrees nationalizing it, confiscating its assets and assuming its liabilities. A further circumstance urged in defense in this case, was the fact that England had, in addition to recognizing Russia, entered into a trade agreement with that country, which was contended by the defendant to have confirmed the confiscation of the property of Russian nationals, the defendant urging the rule that the American assignee (plaintiff) took no better claim than its assignor had, and that the assignor's claim had been extinguished; but this was held not to be the effect of the trade agreement. The court held, in response to the defendant's contention that it had been nationalized, that neither justice nor policy required the court to give effect to the decree of nationalization of the unrecognized Soviet government, especially since the defendant had continued to exercise its corporate functions in New York subsequent to the decree purporting to terminate its legal existence. The court said that the decree-pronouncing government being at the time of the judgment unrecognized, the problem before it was not determinable by any technical rules but by "the largest considerations of public policy and justice," and that neither public policy nor justice required it to recognize the legal extinguishment of the Russian corporation as a means to the nullification of its just debts. As to the defense that the defendant corporation's assets had been confiscated, the court said that the decree of confiscation was *brutum fulmen*, and continued: "Russia might terminate the liability of Russian corporations in Russian courts or under Russian law. Its fiat to that effect could not constrain the courts of other sovereignties, if assets of the debtor were available for seizure in the jurisdiction of the forum," and this decree was held to be in no true sense a decree of bankruptcy.

³¹ Decrees of the Soviet government, confiscating property and nationalizing corporations, have also been denied operation or recognition as lawful, among other cases,—

was held applicable to the decrees in England before that country accorded recognition to the Soviet government.³²

But, on the other hand, the courts of England, after recognition by Great Britain of the Soviet government as the *de facto* and later the *de jure* government of Russia, applied to the decrees of the present Russian government the principle heretofore stated as applicable to that situation. The different rules applicable where the confiscating government has been recognized and where recognition has been refused are perspicuously illustrated in the Court of Appeals decision of the *Sagor* Case, (*supra*, note 10) where the judgment of the court of King's Bench (stated in note 32) was reversed solely upon the ground that recognition had been accorded Russia subsequent to the former judgment rendered in the case. So, in several cases, the English courts recognized the validity of Russian fiats, holding that they effectually divested the title of owners of private property, under the view that such was their intended operation.³³

So, the rule stated above was applied in England, with full effect, being given the radical decrees of the Soviet regime, until two important and perhaps far-reaching cases came before the House of Lords, wherein their lordships, in lengthy judgments, made a reëxamination of the Russian decrees and unanimously concurred in the view that the decrees were not intended by the Soviet government actually to terminate the legal existence of the corporations affected,

—where the defense was made that a Russian corporation had no capacity to sue, its nationalization having been decreed. *Joint Stock Co. of Volgakama Oil & Chemical Factory v. National City Bank* (1924) 210 App. Div. 665, 206 N. Y. Supp. 476; *Russian Reinsurance Co. v. Stoddard* (1925) 211 App. Div. 132, 207 N. Y. Supp. 574.

—where a Russian corporation sought to avoid being made a party defendant, over its contention that it was "an arm or part of the Soviet government of Russia." *Hennenlotter v. Norwich Union Fire Ins. Soc.* (1924) 124 Misc. 626, 207 N. Y. Supp. 588.

—where it was contended that at a material time large assets of the Singer Sewing Machine Company in Russia had been lost through confiscations by the Soviet government. *Bourne v. Bourne* (1924) 209 App. Div. 419, 204 N. Y. Supp. 866.

³² *Aksionairnoye Obschestvo v. Sagor* [1921] 1 K. B. 456, holding an English purchaser of plywood confiscated by the Soviet government and imported into England took no valid title thereby as against the victim of the spoliation, a Russian corporation which sought, and was allowed, to recover the plywood after its importation into England. See, note 10, for the final disposition of this case.

³³ *Aksionairnoye Obschestvo v. Sagor* (Court of Appeal) *supra*, note 10; *White, Child & Beney v. Eagle, S. & B. Dominions Ins. Co.* (1922) 127 L. T. N. S. 571, 38 Times L. R. 616—C. A.; *The Jupiter* (1924) 40 Times L. R. 673, judgment affirmed in L. R. [1924] Prob. 236, 40 Times L. R. 815, 93 L. J. Prob. N. S. 156—C. A. See also the Court of Appeal and King's Bench judgments of the two House of Lords cases cited *infra*, note 34.

but merely stated a present policy of change and contemplated a future extinguishment of them.³⁴ These two cases are very interesting in a general survey of the subject, but under the view taken by their lordships of the cases they are beyond the scope of the note, a plea, *inter alia*, that obligations claimed by the plaintiff Russian bank had been transferred to the Russian government by its decrees not being necessary to a determination of the case, since the Russian government had laid no claim to the obligations. But, since the United States does not recognize Russia, and, as heretofore seen, our courts need not give effect to its decrees confiscating private property and dissolving its corporations unless public policy or private justice requires that they be recognized as proceeding from a quasi-governmental authority, a determination of the intended effect of the decrees is not important in this country, in cases not so giving effect to them,³⁵ though it would, of course, be necessary in cases where they were given the effect of law; and in such cases the interpretation given the decrees and the view taken of their intent by the courts or lawyers of Russia would doubtless be conclusive upon foreign courts.

³⁴ *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, *supra*, note 9; *Banque Internationale de Commerce v. Goukassow* [1925] A. C. 150.

³⁵ See *Fred S. James & Co. v. Second Russian Ins. Co.*, *supra*, note 1.