

Russian Government in Our Courts

Boardman Wright

Follow this and additional works at: <http://scholarship.law.cornell.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Boardman Wright, *Russian Government in Our Courts*, 11 Cornell L. Rev. 49 (1925)
Available at: <http://scholarship.law.cornell.edu/clr/vol11/iss1/4>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

The Russian Government in Our Courts

BOARDMAN WRIGHT*

Will our courts be compelled to modify their rules as to suits against foreign governments, because of the commercial activities of the Russian Soviet Government?

The present Russian government has reserved to itself the sole right to conduct foreign trade. It may conduct such trade by its own agents and in its own name, or by agencies established by it for that purpose. If the former plan is adopted, our courts will be faced with greater difficulties than if the latter one is favored.

It is an established principle of international law that suit will not lie in our courts to enforce a liability in contract or in tort against a foreign government without its consent.¹

This principle has been applied, in some instances, even to suits *in rem*, as in admiralty, when the sovereign either appeared and claimed immunity, or made proper diplomatic representations.²

According to the weight of authority, this rule is not applicable when the suit is not directly against the foreign government, but against an agency (often a corporation) organized or appointed to conduct business,³ nor to suits *quasi in rem* to determine the title to real or personal property within the jurisdiction of the court.⁴ Nor does it apply, at least in this country, to suits against an officer of the government who is alleged to have exceeded his authority.⁵

*Of the Bar of the City of New York.

¹See *Beers v. Arkansas*, 61 U. S. (20 How.) 527 (1857); *U. S. v. Diekelman*, 92 U. S. 520, 524 (1875); *Oliver Co. v. Mexico*, 264 U. S. 440 (1923); *Transportes Maritimos v. Almeida*, 265 U. S. 104 (1923); *Kawanakoa v. Polyblank*, 205 U. S. 349 (1906); *Ex parte New York*, 256 U. S. 490 (1920); *Mason v. Intercolonial Ry. Co.*, 197 Mass. 349 (1908); *Wulfsohn v. Russian Republic* 234 N. Y. 372 (1923).

²See the cases collected in *Re Muir*, 254 U. S. 522, 532-533 (1920). *Contra*: *The Prins Frederik*, 2 Dodson 451 (1820); *The Charkieh*, L. R. 4 Adm. & Ecc. 59 (1873); *Clarke v. Steam Nav. Co.* 1 *Story* 531, (1841); *Ex Parte Transportes Maritimos*, 264 U. S. 105 (1923); *The Jupiter*, 19 Lloyd Lists 325 (1924).

³*Hopkins v. Clemson Agricult. College of So. Car.*, 221 U. S. 636 (1910); *Molina v. Comision Reguladora del Mercado de Henequen*, 91 N. J. L. 382 (1918); *Brisco v. Bank of Commonwealth of Kentucky*, 11 Pet. (U.S.) 257 (1837); *Pilger v. U. S. Steel Corp. and Public Trustee*, 127 Atl. (N. J.) 103 (1925); *Sloan Shipyards Corp. v. U. S. Shipping Board*, 258 U. S. 549, 566 (1921); *Asram-Robertson Lamp Works, Ltd. v. Public Trustee*, 23 Rep. of Patent Cas. 189; *Kunglig Jarnvagsstyrelsen v. Dexter & Carpenter*, 300 Fed. 891 (1924).

⁴*Pilger v. U. S. Steel Corp. and Public Trustee*, 127 Atl. (N. J.), 103 (1925); *Gladstone v. Musurus Bey*, 1 H. & M. 495 (1862); *Smith v. Weguelin*, L. R. 8 Eq. 198 (1869); *Lariviere v. Morgan*, 1871-1872 L. R. 7 Ch. App. 550 (1871).

⁵*Osborn v. Bank*, 9 Wheat. 738; *U. S. v. Lee*, 106 U. S. 196 (1882). *Philadelphia Co. v. Stimson*, 223 U. S. 605, 619 (1911) and cases there cited.

In two of the cases cited above (*Wilfsohn v. Russian Republic, supra*, and *The Jupiter, supra*), the present Russian government has asserted its immunity. One involved the right to money on deposit in a New York bank, the other ownership of a vessel in an English port.

The situation may be rendered more difficult by a recognition by our government of the present Russian government, either as a *de facto* or as a *de jure* government. At present, because of non-recognition, our courts not only deny its right to sue,⁶ but refuse to recognize its decrees, as for instance, a decree dissolving an insurance corporation and confiscating its assets, at least so far as regards contracts of the corporation enforceable in the United States.⁷ In the cases cited the New York courts treated the corporation as still existing, and in one of them even when the suit was by an English beneficiary, although the Soviet government had been recognized by England.

But the United States Supreme Court has laid down the rule that such recognition "is retroactive in effect, and validates all the actions and conduct of the government so recognized from the commencement of its existence,"⁸ and this rule was approved and followed by the High Court of Justice in England, upon the recognition by that government of the Russian government.⁹

Whether confiscation of property by a recognized foreign government would be held applicable to property in this country is doubtful: the contrary has been held in one case.¹⁰ In the New York decisions above cited, this question was left open.

In the past, commerce between nations has been conducted, almost universally, by private corporations. If a foreign government sends an official here to buy and sell goods, and conduct business generally, for it and in its name, reserving the right to object to the jurisdiction of our courts whenever a suit is brought against its representative, while retaining the right to sue whenever it so desired, the situation might easily become intolerable. It would seem that either the Russian government should act by some agency which would be suable as a person distinct from the sovereign, or it should waive its immunity as regards ordinary commercial transactions, or our courts

⁶Russian etc. Republic v. Cibiario, 235 N. Y. 255 (1923).

⁷James v. Second Russian Co. 239 N. Y. 248 (1925); Sokoloff v. Nat. City Bk., 239 N. Y. 158, (1924); Joint Stock Co. v. Nat. City Bk., 210 A. D. 665 (1924); Bourne v. Bourne, 204 N. Y. Sup. 866 (1924).

⁸Oetjen v. Central Leather Co., 246 U. S. 297, 302-303 (1917). cf. Williams v. Bruffy, 96 U. S. 176, 186 (1877). Underhill v. Hernandez, 168 U. S. 253 (1896).

⁹Luther v. Sagor, (1921) 3 K. B. 532.

¹⁰Baglin v. Cusenier Co., 156 Fed. 1015 (1905); mod. and affd. 164 Fed. 256 (1908); 221 U. S. 580 (1910).

must adopt the view that the rule is inapplicable to foreign governments engaging in such transactions, especially in this country, extending to such cases the principles laid down in *Molina v. Comision, etc.*,¹¹ where the New Jersey Supreme Court, after reviewing the decisions, held as follows:

"The dignity of the government, if it suffers at all, suffers because it voluntarily enters into a commercial enterprise and its independence is not affected by proceedings against the corporation. The extension of the rule of immunity has been carried far, since in Marshall's day it was a question whether even a public vessel of war was immune from seizure; but it has never been carried so far as to permit a foreign government to detract from the independence and dignity of the nation which was hospitable to its corporations by making them public agencies and thereby attempting to withdraw them from the jurisdiction of their host. The independence and dignity of a state requires that it should be free to exercise jurisdiction quite as much as in a different case it should refuse to exercise jurisdiction. The dignity and independence of New Jersey is quite as important as the dignity and independence of Yucatan. Our dignity and independence would suffer if we should be unable to exercise jurisdiction in our own borders over a business corporation which is here only by our courtesy. That courtesy is extended, or must be assumed to be extended, to the corporation upon terms that it shall be subject to our laws."

¹¹Supra footnote No. 3; upon the general question whether a foreign government may be sued, see Vol. 10 CORNELL LAW QUARTERLY 390, noting *Pilger v. U. S. Steel Corp. and Public Trustee*, 127 Atl. (N. J.) 103.