

the state is perpetual, and survives the form of its government The recognized government may carry on the suit, at least until the new government becomes accredited here by recognition.

The argument that the plaintiff in error may at some future time, if the Soviet régime is recognized by our government, be compelled to pay again what it is obliged to pay now, is fallacious. It is only the acts performed in its own territory that can be validated by the retroactive effect of recognition. Acts therefore performed outside its own territory cannot be validated by recognition

Following these principles, we agree with the contention of the defendant in error that the state of Russia, as a plaintiff, may continue the prosecution through the agency vested in Mr. Ughet, and the plaintiff in error will be protected as against any possible future claims of a subsequent recognized government of Russia, if payment be made as directed in this judgment¹⁾

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b) Einzelstaatliche Gerichte.

1) Court of Appeal of New York.

**Fred S. James & Co. v. Rossia Ins. Co. of America. Feb. 14, 1928
(160 N. E. 364)**

Anerkennung — Das Nationalisierungsdekret des Sowjet-Staats.

1. *Die Sowjetregierung ist von den Vereinigten Staaten niemals anerkannt worden, und deren Verordnungen erhalten vor amerikanischen Gerichten nur insoweit Geltung, als Gerechtigkeit und Billigkeit (nach amerikanischem Maßstab gemessen) es verlangen.*

2. *Wenn mit moralisch unanfechtbaren Mitteln Privateigentum konserviert wird, so werden die amerikanischen Gerichte ein solches Vorgehen unterstützen, wie auch immer die Frage des Fortbestehens der Privatgesellschaften nach dem Nationalisierungsdekret rechtlich zu entscheiden sei.*

3. *Selbst bei Aufrechterhaltung des Dekrets kämen die Gelder der bolschewistischen Regierung und nicht dem Kläger zugute.*

Tatbestand. Eine russische Versicherungsgesellschaft Rossia besaß eine Tochtergesellschaft (die Beklagte) in den Vereinigten Staaten, der sie zum 1. April 1919 (dem Tag, an dem der russische Staat nach dem Nationalisierungsdekret das Vermögen der Privatversicherungsgesellschaften übernehmen sollte) fast ihr Gesamtvermögen übertrug. Der Kläger war Gläubiger der alten russischen Gesellschaft; er beanstandet

¹⁾ Vgl. hierzu Cornell Law Quarterly, Bd. 13, 1928, S. 297 ff.; Mich. Law. Rev. Bd. 7, 1928, S. 800 ff.; Yale Law. Jour. Bd. 37, 1928, S. 360.

die Übertragung und klagt auf Befriedigung seiner Forderung aus den von der Gesellschaft übernommenen Geldern.

Das Gericht weist die Klage ab, u. a. aus folgenden Gründen:

"If the decrees of the Soviet Republic were for all purposes accorded full credit by our government, if they were recognized in the largest measure as emanating from duly constituted authorities of a sovereign state, the Russian corporation on April 1, 1919, might be regarded as dead, its assets confiscated by the republic, its liabilities obliterated, and its directors mere fugitives and refugees shorn of all power even to conserve its property amid the chaos of revolution. We have never recognized that government. Its decrees are treated as a nullity except in so far as there is need to recognize them for the purpose of promoting justice and equity as we regard justice and equity

Frank admission may be made that, on the record before us and on the basis of strict interpretation of law, Sturhahn's authority to act for the Russia of Petrograd to the extent of assigning all its assets and liabilities to the new corporation and of holding as trustee for the old company the shares of stock of the new might be deemed to be lacking if it were not supplied by an emergency so great as to invest him by force of its existence with extraordinary powers The decree of the Soviet Republic assumed to confiscate all 'available property' of the Russia. If we were to recognize and enforce that destructive proclamation, the Bolshevik government rather than this plaintiff would be the gainer. When old institutions have fallen and none which we will recognize have succeeded, how shall we deal with foreign owners of property within our jurisdiction? We cast aside rigid rules made to control other conditions. We insist upon honest conduct, but when the morality of the proceeding satisfies us as a court of equity, we will not obstruct the conservation of property accumulated and segregated by command of our own statute for the protection and security of business transacted by aliens 'in this country and not elsewhere'. We view with some degree of indulgence the honest, though possibly irregular, efforts of a resident agent of foreign property and of statutory trustees controlling that property when they are far removed from the owner, when mails and cables are interrupted, when old governments and old laws are overthrown, and no new government and no new law acceptable to our institutions have been established. Our attitude is fully expressed when we say:

'The problem before us is governed, not by any technical rules, but by the largest considerations of public policy and justice.' *James & Co. v. Second Russian Ins. Co.*, 239 N. Y. 248, 256, 146 N. E. 369, 370 (37 A. L. R. 720).

The Russia of Petrograd may under the Soviet decree, have ceased on April 1, 1919, to exist in Russia. Even here, its corporate life may have expired. It was half dead and half alive. We make no effort to define the authority of its directors as such. We do

hold that these proscribed individuals fleeing from the fury of the revolution retained the power to conserve property in this country as far as the courts of New York can protect it. Sturhahn and the trustees have exerted themselves to preserve assets from confiscation by revolutionists whose authority our government rejects. The acts of the manager and the trustees, ratified and confirmed by the refugee directors in Paris, are recognized by us as just, equitable, and altogether legitimate acts of conservation."

Anmerkung. Diese Entscheidung bietet ein Beispiel dafür, daß die amerikanischen Gerichte sich bei der Frage der Anwendung der Sowjetverordnungen nach dem Einzelfall richten und sich keine feste Praxis gebildet hat. Nach der traditionellen Entscheidungsweise werden die Gesetze einer von den Vereinigten Staaten nicht anerkannten Regierung von den Gerichten der Vereinigten Staaten nicht angewandt. Aber nachdem die Sowjet-Regierung mehrere Jahre bestanden hatte, wichen einzelne Gerichte von dieser Praxis ab, um Härten zu vermeiden. Vgl. das obiter dictum in dem Fall Sokoloff v. National City Bank 1924 [154 N. E. 917], in dem es heißt, daß eine Regierung, die gezeigt hat, daß sie souveräne Gewalt besitzt "but which has forfeited by its conduct the privileges ... of sovereignty, may gain for its acts and decrees a validity quasi-governmental, if violence to fundamental principles of justice or to our own public policy might otherwise be done"; ferner die Bemerkung des Richters der unteren Instanz im gleichen Fall [199 N. Y. S. 355]: "By legal fiction we must continue to assume that the old imperial government is the only sovereign government in Russia. Nevertheless I can see no valid objection to permitting the defendant to prove the actual conditions prevailing in that great country. Indeed we know as a matter of common knowledge that there is a government there which has been functioning in some fashion for five years or more and that it is not the imperial government of the czars. Facts are facts, in Russia the same as elsewhere." Vgl. auch aus dem Jahr 1925 die Entscheidung Russian Re-Insurance Co. v. Stoddard [147 N. E. 703], bei der das Berufungsgericht die Entscheidung des unteren Gerichts mit der Begründung verwarf, daß die klägerische Gesellschaft, da sie durch Sowjet-Dekret aufgelöst worden sei, keine Aktiv-Legitimation besitze: die Vernunft [common-sense] müsse die veränderten Umstände in Rußland anerkennen, Billigkeit und Gerechtigkeit müßten in jedem Einzelfall das Entscheidende sein.

In dem vorliegenden Fall wird deutlich gesagt, daß Billigkeitsgründe für die Entscheidung maßgebend seien, und die Berufung hierauf führt hier zum anderen Ergebnis als in den eben zitierten Fällen.¹⁾

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¹⁾ Vgl. zu der hier besprochenen Frage Wohl, Ostrecht 1925, S. 26 u. Literatur daselbst; Spiropoulos, Die de-facto-Regierung im Völkerrecht (Beitr. zur Reform u. Kodifikation