

Foreign Confiscations in Anglo-American Law (Book Review)

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BOOK REVIEWS

FOREIGN CONFISCATIONS IN ANGLO-AMERICAN LAW. By Edward D. Re. New York: Oceana Publications, 1951. Pp. xii, 200. \$5.00.

The litigation in American courts resulting from the Mexican and Soviet nationalization decrees concerned only the participants therein and a few international lawyers. Since the Second World War, however, nationalization in European countries has become a widespread phenomenon, vitally affecting the interests of American citizens, many of whom were formerly nationals of such countries and had extensive property interests abroad. As a result, many general practitioners are now interested in this field; they will welcome Prof. Edward Re's recently published "Foreign Confiscations in Anglo-American Law."

While there was never a doubt that Russian nationalization constituted open and professed confiscation, postwar nationalization decrees have followed a different pattern and have provided for compensation of the former owners. Prof. Re's book contains an interesting discussion of the various factors which will determine when an offer or grant of compensation is adequate. Nationalization amounts to mere expropriation when the measure is of a protective nature (Netherland and Yugoslav decrees), but it is confiscation when the offer of compensation is illusory. Problems arising from these various modes of nationalization may soon be tested in our courts.

Where foreign decrees are found to be confiscatory, it is clear that they are repugnant to United States public policy and will not be enforced here as to property located within the jurisdiction of the forum. This is because, under American political theory, governmental powers may not be exercised so as to deprive a person of property without due process and just compensation.

While this principle itself is simple, the author shows that its application in practice is not without difficulty, inasmuch as the question of the situs of the property requires a consideration of many factors, particularly where an intangible res (as *e.g.* a debt) is concerned. Once it has been determined that the property is located within the jurisdiction of the forum, Anglo-American decisions are unanimous in refusing to enforce foreign confiscatory measures because they are shocking to our sense of justice. Difficulties arise, however, when the operative facts occurred in the territory of the confiscating nation. Here American courts are limited by the principle that the courts of one country are bound to abstain from sitting in judgment on the acts of another government done within its own territory.

This principle of non-reviewability of the acts of a foreign government within the latter's territorial domain is called by the author the "Rule of Decision Principle," since he feels that its true nature and extent was best expressed in the well-known case of *Ricaud v. American Metal Company*. There it was said: "When it is made to appear that the foreign government has

acted in a given way on the subject matter of the litigation, the details of such action or the merit of the result cannot be questioned but must be accepted by our courts as a 'rule for their decision.'

The book is a clear and exhaustive study of the nature of this principle and its application in Anglo-American courts when such courts were confronted with cases where, subsequent to the confiscation, either the acting persons or the property itself came within the jurisdiction of the forum.

There are strong and compelling reasons for the universal acceptance of the principle that the acts of a recognized government over persons and property within its jurisdiction, *i.e.*, within its own territorial domain, must be accepted by the courts of other nations as valid and binding acts. Prof. Re's study shows lucidly that disregard of the principle by our courts would violate the international concept of territorial sovereignty and sovereign immunity, and possibly bring about a conflict between the position taken by the courts and the national policy as declared by the executive branch of the government. It is, of course, manifest that the judiciary must not involve the nation in a dispute with a foreign country or in any other manner injure international good will.

The courts have even extended the orbit of the application of the principle so as to apply it not only to recognized foreign governments but to all governments and, in some exceptional admiralty cases, to situations where the ship involved was physically located in the United States and peaceably delivered by its crew into the possession of the foreign government.

The study also shows, however, that while the principle itself is, generally speaking, well justified, its application in some instances has led to harsh and unjust results. The author correctly points out that it is tragic that a Court of Justice should not be guided by rules of law conducive to fairness and equity, even if the application of such rules may in a given case make inroads on the Rule of Decision Principle. This becomes abundantly clear with the author's fascinating account of the recent cases of *Bernstein v. Van Heyghen Freres Societe Anonyme* and *Bernstein v. Nederlandsche-Amerikaansche*. There, application of the Rule of Decision Principle led to the result that plaintiff, a victim of brutal Nazi persecution, was denied recovery for the insurance proceeds from his property in the United States while defendants, who had acquired such property with knowledge of the facts, were permitted to keep their "loot."

Professor Re has brought into play not only an obvious erudition, but also an ability to present complicated problems clearly and simply. In the introduction the author lists an impressive number of difficult questions which he undertakes to answer. The reader at the start of the book may read these questions with a distinct sense of bewilderment, but he will be pleased to find at the end that he "knows all the answers." In summary, this work is a lucid exposition of the problems involved and a sure guide for a timely and important subject.

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