

The Extraterritorial Effect of Confiscatory Decrees

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NOTES AND COMMENT

THE EXTRATERRITORIAL EFFECT OF CONFISCATORY DECREES

Introduction

Under the strain and chaos of world conditions, our courts are again confronted with the formidable task of adjudicating a mass of litigation resulting from the confiscatory decrees enacted by foreign nations.

A confiscation is in essence, the appropriation without compensation of one's private property, to the use of the State.¹ The exercise of the power to confiscate does not under modern precepts of International Law, enjoy the approval it has heretofore received.² Nevertheless, it is common knowledge that confiscations are not altogether infrequent.³

The cases may be conveniently divided into two groups:

I. Those cases where the property or *res* affected by the decree is located within the territorial jurisdiction of the country enacting the confiscatory law, and

II. Those cases where the property or *res*, "title" to which will be transferred by the decree, is situated in a country other than the confiscating State.

The factor whether the government decreeing the confiscation is a *de jure* or a *de facto* government, has not been included in the above classification, since the only difference between the two governments is the element of "recognition",⁴ and it is submitted that "recognition" has extremely little relevancy to the problem when the litigants are private persons.⁵ "Recognition" is of importance when the foreign sovereign wishes to be endowed with the legal advantages flowing therefrom, such as the privilege of bringing suits in the courts of the

¹ See *Ware v. Hylton*, 3 Dall. 199 (U. S. 1796); 1 BOUVIER, LAW DICTIONARY (3d Rev.) 595.

² 4 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 183-187. See resolution of International Law Association *id.* 186, to the effect that "it is contrary to principles of International Law to deprive a foreigner, or a member of a protected minority, of the fundamental rights to which he is entitled as owner, * * * without real compensation". See also *Brown v. United States*, 8 Cranch 122 (U. S. 1814); *United States v. Percheman*, 7 Pet. 51 (U. S. 1833).

³ See *Kunz, The Mexican Expropriations* (1940) N. Y. U. L. Q. REV. 327; *Connick, The Effect of Soviet Decrees in American Courts* (1925) 34 YALE L. J. 499; *Domke*, 65 N. J. L. J. 37, January 22, 1942.

⁴ 1 MOORE, DIGEST OF INTERNATIONAL LAW (1906) 119; *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372, 138 N. E. 24 (1923).

⁵ See *Vladikavkazsky Ry. v. N. Y. Trust Co.*, 263 N. Y. 369, 189 N. E. 456 (1934); *Salimoff & Co. v. Standard Oil Co.*, 262 N. Y. 220, 186 N. E. 679 (1933); *Borchard, Extraterritorial Confiscations* (1942) 36 AM. J. INT. L. 275.

recognizing State,⁶ and as a result of its *status* as a sovereignty, would also be immune from suits in those courts.⁷ But, simply because our political branch of the government⁸ has extended "recognition" to a foreign nation, emphatically does not mean that our courts will *ipso facto* give effect to the laws promulgated by such "recognized" nation.⁹ Whether or not the courts of the forum will give effect to foreign laws and judgments of even a fully "recognized" government, is a matter to be determined by the court of the forum according to its own notions of what is just and proper. Differently put, a State will not give effect to or enforce a foreign law if it is repugnant to the public policy of the forum.¹⁰

The foregoing is but a necessary concomitant to the practicable doctrine of territorial supremacy. Accepting, as we must, as our hypothesis, the notion that the territorial sovereignty is supreme and has exclusive authority within its jurisdiction, it follows inescapably that any restrictions imposed from external sources, without the assent of such State, is an infringement of and in derogation of sovereignty. Since obviously, the municipal laws of a State do not, as such, operate beyond its own territory, it again follows that property situated within the physical boundaries of one State can be affected by the laws and legislative acts of another State, *only in so far as such laws are permitted so to affect such property*, and the determinative query is always whether the result would be abhorrent to the *mores* of the forum.¹¹

⁶ *Russian Socialist Federated Soviet Republic v. Cibrario*, 235 N. Y. 255, 139 N. E. 259 (1923). In *Lehigh Valley R. R. v. State of Russia*, 21 F. (2d) 396 (C. C. A. 2d, 1927), *cert. denied*, 275 U. S. 571, 48 Sup. Ct. 159 (1927), the "recognized" Kerensky Government was permitted to sue, although, in fact, the Soviets had swept it from power and control for nearly a decade. See also *The Sapphire*, 78 U. S. 164 (1870); *The Plaza*, 277 Fed. 91 (E. D. N. Y. 1921); *Republic of Honduras v. Soto*, 112 N. Y. 310, 19 N. E. 845 (1889).

⁷ See *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372, 138 N. E. 24 (1923); Borchard, *The Unrecognized Government in American Courts* (1932) 26 AM. J. INT. L. 261; Fraenkel, *The Juristic Status of Foreign States* (1925) 25 COL. L. REV. 544. On the kinds of governments and their powers, see PERGLER, *JUDICIAL INTERPRETATION OF INTERNATIONAL LAW IN THE UNITED STATES* (1928) § 11.

⁸ See *Oetjen v. Central Leather Co.*, 246 U. S. 297, 38 Sup. Ct. 309 (1918); *Jones v. United States*, 137 U. S. 202, 11 Sup. Ct. 80 (1890) ("Recognition" of foreign governments is within the legislative and executive powers); *Rose v. Himely*, 4 Cranch 241 (U. S. 1808).

⁹ "Recognition does not compel our courts to give effect to foreign laws if they are contrary to our public policy." MR. JUSTICE CRANE, in *Dougherty v. Equitable Life Assurance Soc.*, 266 N. Y. 71, 90, 193 N. E. 897 (1934).

¹⁰ "No action can be maintained upon a cause of action created in another state, the enforcement of which is contrary to the strong public policy of the forum." RESTATEMENT, *CONFLICT OF LAWS* (1934) § 612; Lorenzen, *Territoriality, Public Policy and the Conflict of Laws* (1924) 33 YALE L. J. 736, 745, 748.

¹¹ On the legal effects of territorial supremacy, see PERGLER, *JUDICIAL INTERPRETATION OF INTERNATIONAL LAW IN THE UNITED STATES* (1928) § 17. For the so-called "exceptions" to the application of a foreign law, see MINOR,

The additional factor whether the party deprived of his property is a citizen of the United States, or is a foreign national, has not been included in the classification for the reason that such factor is, at most, but *an element* tending to move the discretion of the court. It is by no means pivotal or decisive. As to property within our borders, it is believed that some decisions have attributed altogether too great an importance to the fact whether the victim of the foreign confiscation decree was a "local creditor" or a foreign national.¹² It being axiomatic that equality among men is the keystone of justice, it becomes rather difficult for one to submit to the view that the nationality of the litigant warrants or justifies a difference of treatment. Furthermore, as a Constitutional Law proposition, the amendments to the Federal Constitution guaranteeing "due process of law", are not confined solely to the protection of *citizens*.¹³ The protection of those amendments is extended to *all persons* within the jurisdiction, and it would be doing no violence to the Constitution to invoke the Fifth Amendment on behalf of a foreigner having property in this country. In the Amendment we find a codification of an historical "public policy".

CONFLICT OF LAWS (1901) §§ 5-11. Professor Minor therein states that "international comity" is nothing more than "an enlightened sentiment of justice and policy". See also SAVIGNY, A TREATISE ON THE CONFLICT OF LAWS (Guthrie's Translation, 2d ed., Rev.) 68-71, 76-77; WESTLAKE, A TREATISE ON PRIVATE INTERNATIONAL LAW (4th ed. 1905) 53; *Hilton v. Guyot*, 159 U. S. 113, 163, 16 Sup. Ct. 139 (1895); *Marshall v. Sherman*, 148 N. Y. 9, 24, 42 N. E. 419, 423 (1895); *Howard v. Howard*, 200 N. C. 574, 158 S. E. 101 (1931).

¹² See MR. JUSTICE SUTHERLAND in *United States v. Belmont*, 301 U. S. 324, 332, 57 Sup. Ct. 758 (1937). " * * * our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens. * * * What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled." In the *Belmont* case there was no question under the Fifth Amendment. See note 23, *infra*; *Disconto Gesellschaft v. Umbreit*, 208 U. S. 570, 28 Sup. Ct. 337 (1908); MR. JUSTICE RIPPEY dissenting in *Moscow Fire Ins. Co. v. Bank of New York & Trust Co.*, 280 N. Y. 286, 317, 321-323, 20 N. E. (2d) 758 (1939); *Holzer v. Deutsche Reichsbahn-Gesellschaft*, 277 N. Y. 474, 14 N. E. (2d) 798 (1938); *Frenkel & Co. v. L'Urbaine Fire Ins. Co. of Paris, France*, 251 N. Y. 243, 249, 167 N. E. 430 (1929); *cf. Blake v. McClung*, 172 U. S. 239, 19 Sup. Ct. 165 (1898). "Once properly in our court and accepted as a suitor, neither the law, nor court administering the law, will admit any distinction between the citizen of its own State and that of another. Before the law and in its tribunals there can be no preference of one over the other." MR. CHIEF JUSTICE PARKER in *Hibernia Nat. Bank v. Lacombe*, 84 N. Y. 367, 385, 38 Am. Rep. 518 (1881); *Matter of Accounting of Waite*, 99 N. Y. 433, 439, 2 N. E. 440 (1885).

¹³ *Yick Wo v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064 (1886). See REV. STAT. § 1977 (All persons within the jurisdiction of the United States shall have equal rights under the law); *Truax v. Raich*, 239 U. S. 33, 36 Sup. Ct. 7 (1915); BURDICK, THE LAW OF THE AMERICAN CONSTITUTION (1922) §§ 236, 276.

I

Typical of the cases coming within the first group, is *Salimoff & Co. v. Standard Oil Co.*¹⁴ The Soviet Government sold oil to the defendant obtained from the plaintiffs' confiscated oil lands. The plaintiffs, Russian nationals, in an action for an accounting, argued that the confiscation by an "unrecognized" government was equivalent to a seizure by bandits, and therefore could not affect the "title" of the plaintiffs. The contention was unsound since obviously the Soviet Government, though then "unrecognized" by the United States, was the *de facto* government of Russia, and its decrees valid by the law of nations. The operative facts having occurred in Russia, the law of Russia determined their validity.¹⁵ A case parallel to the *Salimoff* case is *Oetjen v. Central Leather Company*.¹⁶ The plaintiff brought an action to replevin two consignments of hides to which the defendant asserted ownership through a purchase from General Francisco Villa in Mexico during a civil war then in progress. The revolution having been successful, the seizure by the *de facto* government of property within its territorial jurisdiction and under its control, was an act, the legality of which could not be re-examined by our courts, even though the seized property was subsequently brought into the forum.¹⁷ However, if the faction that undertakes the confiscation and seizure, does not ultimately attain the dignity of a *government*, either *de jure* or *de facto*, its decrees will not be accorded the force of law, and are therefore, ineffectual to divest the owner of "title" to the property seized.¹⁸

II

A more significant problem is encountered in the bulk of litigation coming within the second group. Should our courts give effect to these decrees as to property with a domestic *situs*? Turning for

¹⁴ 262 N. Y. 220, 186 N. E. 679 (1933).

¹⁵ See *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 29 Sup. Ct. 511 (1909); *Slater v. Mexican Nat. Ry.*, 194 U. S. 120, 24 Sup. Ct. 581 (1904); *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198 (1918); *Alabama Great Southern R. R. v. Carroll*, 97 Ala. 126, 11 So. 803 (1892).

¹⁶ 246 U. S. 297, 38 Sup. Ct. 309 (1918).

¹⁷ See *Ricaud v. American Metal Co., Ltd.*, 246 U. S. 304, 38 Sup. Ct. 312 (1918); *MacLeod v. United States*, 229 U. S. 416, 33 Sup. Ct. 955 (1913); *Underhill v. Hernandez*, 168 U. S. 250, 18 Sup. Ct. 83 (1897); *Terrazas v. Donohue*, 115 Tex. 46, 275 S. W. 396 (1925); *Terrazas v. Holmes*, 115 Tex. 32, 275 S. W. 392 (1925); *Luther v. Sagor*, 1 K. B. 456 (1921), *rev'd*, 3 K. B. 532 (1921).

¹⁸ See *Williams v. Bruffy*, 96 U. S. 176 (1877) (When military forces of Confederacy were overthrown, it utterly perished, and with it all its enactments); *Cia Minera Ygnacio Rodriguez Ramos, S. A. v. Bartlesville Zinc Co.*, 115 Tex. 21, 275 S. W. 388 (1925). See also Note, *De Facto Governments—The Significance of Their Acts in Our Courts* (1933) 8 ST. JOHN'S L. REV. 119.

guidance to the "Russian" cases, we see that the courts of no country would give any effect to the confiscatory decrees as to property having a *situs* in the forum, either before¹⁹ or after²⁰ the "recognition" of the Soviet Government. Though several grounds were stated for having denied extraterritorial effect to the confiscation decrees, it is manifest that the determining factor was the repugnancy to the local policy.²¹ Since a Russian confiscation of New York property is beyond the jurisdiction and power of Russia, the effect of such a confiscatory decree, as to property having a *situs* in New York, must be determined by the New York courts.

The application of the principles enunciated in these "Russian" cases could easily be implemented to prevent our giving effect to the confiscatory decrees of other nations, but the unique circumstances surrounding our "recognition" of Russia, which led to the portentous decision of *United States v. Pink*,²² might have the unfortunate effect of beclouding some well-settled doctrines of law. The Supreme Court of the United States, in the *Pink* case, having before it the task of construing the "Litvinov Assignment",²³ held that the international compact concluded by our President, made the question a federal one, and completely overrode New York public policy, and thus deprived

¹⁹ *Petrogradsky Mejdunarodny Kommerchesky Bank v. The National City Bank of N. Y.*, 253 N. Y. 23, 170 N. E. 479 (1930), *cert. denied*, 282 U. S. 878, 51 Sup. Ct. 82 (1930); *James & Co. v. Rossia Ins. Co. Am.*, 247 N. Y. 262, 145 N. E. 917 (1928); *Russian Reinsurance Co. v. Stoddard*, 240 N. Y. 149, 147 N. E. 703 (1925); *James & Co. v. Second Russian Ins. Co.*, 239 N. Y. 248, 146 N. E. 369 (1925); *Russian Socialist Federated Soviet Republic v. Cibrario*, 235 N. Y. 255, 139 N. E. 259 (1923). Connick, *The Effect of Soviet Decrees in American Courts* (1925) 34 YALE L. J. 499. For English, French, German and Swiss decisions see Nebolsine, *The Recovery of the Foreign Assets of Nationalized Russian Corporations* (1930) 39 YALE L. J. 1130. See also *Bourne v. Bourne*, 240 N. Y. 172, 148 N. E. 180 (1925).

²⁰ *Vladikavkazsky Ry. v. N. Y. Trust Co.*, 263 N. Y. 369, 189 N. E. 456 (1934). See cases cited in *United States v. Moscow Fire Ins. Co.*, 280 N. Y. 286 (1939), judgment affirmed by an equally divided court, 309 U. S. 624, 60 Sup. Ct. 725 (1940).

²¹ *Supra* notes 9, 10, 11, 19, 20. "It belongs exclusively to each sovereignty to determine for itself whether it can enforce a foreign law * * *." *Marshall v. Sherman*, 148 N. Y. 9, 24, 42 N. E. 419, 423 (1895). See *WEARTON, CONFLICT OF LAWS* (3d ed. 1905) § 4a; *MINOR, CONFLICT OF LAWS* (1901) § 5 *et seq.*

²² *United States v. Pink*, 315 U. S. 203, 62 Sup. Ct. 552 (1942).

²³ See *United States v. Belmont*, 301 U. S. 324, 57 Sup. Ct. 758 (1936). The majority in the *Pink* case relied upon the *dictum* of MR. JUSTICE SUTHERLAND in the *Belmont* case, to the effect that the mere repugnance of the Soviet decrees to the public policy of the forum would not be a sufficient ground to deny them effect after "recognition". In fact, the *Belmont* case merely held that the United States as confiscatory assignee, had a cause of action against a stakeholder arising out of the "Litvinov Assignment". The question whether the assignment to the United States would have prevailed over adverse private claims was not therein decided for there was no adverse claimant in that suit. For that reason, MR. CHIEF JUSTICE STONE, in the *Pink* case, did not deem the *Belmont* case controlling.

the State of New York of its power to determine for itself what law is to apply to property rights within the state.

Mr. Chief Justice Stone in his dissenting opinion, in which Mr. Justice Roberts concurred, noted that the assignment to the United States was not to be construed as a license to emasculate state public policy; and further, that the decision attributed to the recognition of Russia and the assignment, a "potency * * * which is lacking to the full faith and credit clause of the Constitution".²⁴ Mr. Chief Justice Stone is, of course, correct in the assertion that " * * * a state, following its own law and policy, may refuse to give effect to a transfer made elsewhere of property which is within its own territorial limits".²⁵

Several excellent articles have already appeared questioning the soundness of the *Pink* decision²⁶ in view of its deviation from well-defined doctrines of law, and its impairment of the protection it was heretofore believed the Fifth Amendment of our Constitution afforded private property. The further observation may be made that the decision extolled an executive agreement by according to it the legal effect of a treaty, and consequently made it "the supreme Law of the Land"²⁷ thereby overriding any conflicting state policy.²⁸ It is extremely doubtful that the parties to the "Litvinov Assignment" contemplated that as a result of the agreement, the Russian confiscatory decrees would be given extraterritorial force and actually effect a transfer of "title" to American-*situs* property.²⁹ There is certainly no such intimation in the negotiations, and since the parties must have been aware of the resolute refusal of American courts to give extraterritorial effect to those decrees,³⁰ such an intent would have been perspicuously expressed.

After the *Pink* case had been decided, a conversion action was prosecuted in the Supreme Court of New York, by a citizen of France

²⁴ See MR. CHIEF JUSTICE STONE, dissenting in *United States v. Pink*, 315 U. S. 203, 248, 62 Sup. Ct. 552, 574 (1942).

²⁵ 315 U. S. 246, 62 Sup. Ct. 573; see *Clark v. Williard*, 294 U. S. 211, 54 Sup. Ct. 615 (1934); *Green v. Van Buskirk*, 7 Wall. 139 (U. S. 1869); *Educational Studios v. Consolidated Film Industries*, 112 N. J. E. 352, 164 Atl. 24 (1933); *Castrique v. Imrie*, L. R. 4 H. L. 414 (1870); Lorenzen, *Territoriality, Public Policy and the Conflict of Laws* (1924) 33 YALE L. J. 736, 739, 740, 741.

²⁶ Borchard, *Extraterritorial Confiscations* (1942) AM. J. INT. L. 275; Jessup, *The Litvinov Assignment and the Pink Case* (1942) AM. J. INT. L. 282; Note, *Effect of Soviet Recognition Upon Russian Confiscatory Decrees* (1942) 51 YALE L. J. 848; Note (1942) 30 GEO. L. J. 663.

²⁷ U. S. CONST. Art. VI; cf. *United States v. Curtiss-Wright Export Corp.*, 299 U. S. 304, 57 Sup. Ct. 216 (1936).

²⁸ See McCLURE, *INTERNATIONAL EXECUTIVE AGREEMENTS* (1941) 272 *et seq.* Professor Borchard has expressed the opinion that the thesis of Mr. McClure to evade the treaty-making power by conferring greater power on the executive is "unfortunate advice", and that such an end is unsound. Borchard, *Book Review* (1942) 42 COL. L. REV. 887.

²⁹ *Supra* note 26.

³⁰ See *United States v. Moscow Fire Ins. Co.*, 280 N. Y. 286 (1939), 309 U. S. 624, 60 Sup. Ct. 725 (1940); *Connick* (1925) 34 YALE L. J. 499; Borchard (1937) 31 AM. J. INT. L. 675; *supra* note 26.

against a French corporation doing business in New York, for the wrongful detention of securities delivered to the defendant in New York pursuant to a bailment agreement. The defendant set up as a first separate and complete defense, "duly enacted" decrees of the French Government depriving the plaintiff of his French nationality and confiscating his assets, including the securities specified in the complaint. In other words, the defendant-bailee pleaded "title" in a third person, *viz.*, the French Government. Plaintiff moved to strike out the defense on the ground that the confiscation decree (notwithstanding its enactment by a government "recognized" by the United States) is contrary to our public policy and shocking to our sense of justice and equity. Mr. Justice Bernstein denied the plaintiff's motion,³¹ stating that since decisions such as the *Vladikavkazsky Railway* case, "the Supreme Court of the United States has adopted a different view of the effect of such a confiscation decree." Upon appeal to the Appellate Division, defendant urged that, "The case of *United States v. Pink* furnishes the last word on the subject."³² The brief on behalf of the French Government as *amicus curiae*, placed reliance upon, and quoted from Mr. Justice Shientag's opinion in *Anderson v. N. V. Transandine etc.*,³³ in which case a decree of the State of the Netherlands was given effect. But, certainly there is little analogy between the two decrees. As stated by Mr. Justice Shientag:

The Netherlands Decree is a measure of protection, not of expropriation. Its purpose is to conserve, not to confiscate; to protect the rights of the individual, not to destroy them.³⁴

The Appellate Division, First Department,³⁵ reversed, and granted plaintiff's motion to strike out the defense. Mr. Justice Townley stated that "The only cases which have given validity to confiscation decrees are cases arising under the Litvinov Assignment". After quoting from the *Pink* and *Belmont* cases, he stated that "no such situation is presented in the case at bar and the public policy of the State of New York still exists and must be enforced by this

³¹ *Bollack v. Société Générale Pour Favoriser Le Développement Du Commerce et De L'Industrie En France*, 177 Misc. 136, 30 N. Y. S. (2d) (1941), *rev'd*, 263 App. Div. 601, 33 N. Y. S. (2d) 986 (1st Dep't 1942), *motion for leave to appeal to the Court of Appeals denied*, — App. Div. —, 35 N. Y. S. (2d) 717 (1942).

³² Defendant-Respondent's Brief, pages 9–10. *Bollack v. Société Générale*, etc., *supra* note 31.

³³ *Anderson v. N. V. Transandine Handelmaatschappij* (State of the Netherlands, Intervenor), — Misc. —, 28 N. Y. S. (2d) 547 (1941), *aff'd*, 263 App. Div. 705, 858, 31 N. Y. S. (2d) 194 (1941). Affirmed by Court of Appeals, *see* N. Y. L. J., Oct. 2, 1942.

³⁴ MR. CHIEF JUSTICE LEHMAN, writing for the Court of Appeals, said: "Under its [Netherlands decree] terms, the state becomes in effect a trustee for its subjects of their property which might otherwise be without protection * * *. * * * A Decree designed for such effect may hardly be said to offend a public policy of this state." *Supra* note 33.

³⁵ *Supra* note 31.

court. * * * the decree is offensive to this public policy and cannot be enforced".³⁶

Plaintiff's position was further fortified by the recent addition of the words "or any confiscatory law or decree thereof" to Section 977-b of the New York Civil Practice Act.³⁷ That section is certainly definitive of New York public policy, and even though the section merely applies to the foreign *corporations*, it is inconceivable that New York should have a different policy toward individuals of a foreign nationality than it has toward the foreign stockholders of foreign corporations.

The New York courts have also had the occasion to consider the validity or effect to be accorded to the decrees of the German occupying authorities, in cases involving the application of Section 51-a of the New York Civil Practice Act.³⁸ In order that a defendant stakeholder may have the benefits of that section, it must appear that there is an *adverse claim* to the fund for which the plaintiff is suing, and the courts have uniformly held that any "claim" that a foreign "liquidator" may assert, "would be predicated on a fiction which would receive no recognition in our courts."³⁹ "The liquidation process is sheer confiscation."⁴⁰ Mr. Justice Pecora of the New York Supreme Court, although apparently basing his conclusion on the factor of non-recognition by the United States Government of the German military occupation of Holland, tersely declared:

Therefore, any German decrees promulgated in the Netherlands should be given no force or effect whatever in the determination of questions involving property in this State. The purported claims to the property of plaintiff corporation, consisting of two communications received herein by defendant, have no reasonable foundation, and should be regarded as capricious and fanciful.⁴¹

³⁶ The second defense related to the non-compliance with Executive Order No. 8389 as amended. In the view taken by the court, this defense had no relation to the issue, for the defendant's payment of a judgment rendered against it could be conditioned upon plaintiff's compliance with the regulation.

³⁷ N. Y. CIVIL PRACTICE ACT § 977-b relates to the liquidation and distribution of the assets of dissolved or "nationalized" foreign corporations. It declares that any confiscatory law or decree shall have no extraterritorial effect or validity as to the property, "tangible or intangible, debts, demands or choses in action of such corporation within the state * * *". See *Meyer v. Petrograd Metal Works*, 256 App. Div. 1077, 11 N. Y. S. (2d) 125 (1939), *motion for leave to appeal denied*, 281 N. Y. 887, 24 N. E. (2d) 28 (1939).

³⁸ For a discussion of the recent New York adverse claims legislation, see PRASHKER, CASES AND MATERIALS ON NEW YORK PLEADING AND PRACTICE (2d ed. 1937, Supplement, Part II, 1942) 300 *et seq.*, wherein many of these confiscation cases are digested.

³⁹ MR. JUSTICE COLLINS in *Anninger v. Hohenberg*, 172 Misc. 1046, 1047, 18 N. Y. S. (2d) 499, 500 (1939).

⁴⁰ *Supra* note 39. To same effect, see *Koninklijke Lederfabriek v. Chase Nat. Bank*, 177 Misc. 186, 30 N. Y. S. (2d) 518 (1941); *Osborne v. Banco Aleman Antioqueno*, 176 Misc. 664, 29 N. Y. S. (2d) 236 (1941); *Loeb v. Bank of Manhattan Co.*, — Misc. —, 18 N. Y. S. (2d) 497 (1939); *Stern v. Steiner, Inc.*, — Misc. —, 12 N. Y. S. (2d) 44 (1939).

⁴¹ *Amstelbank v. Guaranty Trust Co. of N. Y.*, 177 Misc. 548, 552, 31 N. Y.

Conclusion

The *Bollack* decision⁴² is indeed fortunate in that it reaffirms vital principles of law,⁴³ and limits the *Pink* decision to its proper sphere. The French confiscatory decree was obviously a "penal" law, and it is at this late stage most elementary that, "The courts of no country execute the penal laws of another".⁴⁴ Such a doctrine was concretely established at an early date⁴⁵ in the development of Anglo-American jurisprudence, and has been universally applied.⁴⁶ No doubt, many cases similar to the *Bollack* case will soon come before our courts. It is hoped that the principles therein applied will again be even more freely implemented to effect a proper administration of justice, and thwart the oppression that would otherwise result. Fortunately, indeed, the principles are sufficiently flexible to permit the attainment of that end.

EDWARD D. RE.

S. (2d) 194, 199 (1941). *But cf.* *Ornstein v. Compagnie Generale Transatlantique*, — Misc. —, 31 N. Y. S. (2d) 524 (1941); *Steinfink v. North German Lloyd S.S. Co.*, 176 Misc. 413, 27 N. Y. S. (2d) 918 (1941). (In the latter two cases, plaintiffs were unsuccessful in obtaining a refund of money paid to the defendants for transportation not provided because of war. It is to be noted that the actions were to recover the equivalent of the German marks in dollars.)

⁴² *Supra* note 31.

⁴³ On the German law depriving Jewish emigrants of nationality and property, see Kauffmann, *Denationalisation and Expropriation* (1942) Vol. XCII (British) LAW JOURNAL 93.

⁴⁴ MR. CHIEF JUSTICE MARSHALL in *The Antelope*, 10 Wheat. 66 (U. S. 1825); cf. Leflar, *Extrastate Enforcement of Penal and Governmental Claims* (1932) 46 HARV. L. REV. 193; *supra* note 21. See cases cited in 14 AM. JUR., Criminal Law § 224.

⁴⁵ See C. J. DE GREY in *Rafael v. Verelst*, 2 Wm. Bl. 1055, 1058, 96 Engl. Rep. 621, 622 (1776). "Crimes are in their nature local, and the jurisdiction of crimes is local. In *Folliott v. Ogden*, 1 H. Bl. 131, 3 T. R. 726 (1792), the litigants were British subjects who had resided in New York and New Jersey when laws were passed in those states whereby they were attainted and their property confiscated. The court held that the plaintiff had not been divested of his rights since the New York and New Jersey laws were penal and therefore could have no effect beyond the borders of those states. To same effect see *Wolff v. Oxholm*, 6 Maule & Selw. 99, 18 Rev. Rep. 313 (1817). See STORV, CONFLICT OF LAWS (3d ed. 1846) §§ 619-628, wherein the views of Hertius, Voet, Bartolus, Grotius, and Puffendorf are discussed.

⁴⁶ *Supra* note 45. A decree of the Spanish Republic confiscating the private property of the former King of Spain, was held to be penal and therefore unenforceable in England where certain securities were situated. *Banco de Vizcaya v. Don Alfonso de Borbon y Austria*, [1935] 1 K. B. 140. See also *Huntington v. Attrill*, 146 U. S. 657, 13 Sup. Ct. 224 (1892); *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265, 8 Sup. Ct. 1370 (1888); *Blaine v. Curtis*, 59 Vt. 120, 7 Ail. 708 (1887). See GOODRICH, CONFLICT OF LAWS (2d ed. 1938) § 9.