IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA, *Petitioner,*

—VS.—

MORGAN BELMONT, et al., *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

STANLEY REED,
Solicitor General.

DAVID E. HUDSON,
A. H. FELLER,
ALBERT LEVITT,
Special Assistants to the Attorney General.

HENRY MUNROE,
Special Attorney.

PAUL SWEENEY,
Attorney.

March 1937.

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA, PETITIONER

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

THIS CASE INVOLVES THE FOREIGN RELATIONS OF THE UNITED STATES, AND LOCAL PUBLIC POLICY CAN NOT CONTROL

The fundamental error which pervades respondents' brief is their assumption that this case is on the same plane as an ordinary assignment between individuals, involving nothing more than ordinary private law principles. Respondents' brief (p. 47) states that "This case does not involve international relations of the United States in their true sphere." That is precisely what this case does

involve. For that reason this case is different from any case which has preceded it.[1]

Because of respondents' effort to limit the scope and meaning of this case, and in order to give the Court a true and complete picture of the negotiations leading up to and following this assignment, the Government submits for the convenience of the Court the official document of the State Department entitled "Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics" (Eastern European Series, No. 1, 1933), hereafter cited as "Official Document."

The following extracts are particularly to be noted:

In President Roosevelt's letter to President Kalinin, dated October 10, 1933 (Off. doc., p. 1), he speaks of—

> the desirability of an effort to end the present abnormal relations between the hundred and twenty-five million people of the United States and the hundred and sixty million people of Russia.

and therefore invited President Kalinin to designate representatives—

> to explore with me personally all questions outstanding between our countries.

---

[1] Except the case of *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, which was decided solely on jurisdictional grounds.

In President Kalinin's acceptance of this invitation, dated October 17, 1933 (Off. doc., pp. 1 and 2), he stated in part as follows:

> * * * the abnormal situation, to which you correctly refer in your message, has an unfavorable effect not only on the interests of the two states concerned, but also on the general international situation, increasing the element of disquiet, complicating the process of consolidating world peace and encouraging forces tending to disturb that peace.

Thereafter negotiations took place. On November 16, 1933, President Roosevelt, in a letter to Mr. Litvinov (Off. doc., p. 4), stated that—

> I am very happy to inform you that as a result of our conversations the Government of the United States has decided to establish normal diplomatic relations with the Government of the Union of Soviet Socialist Republics and to exchange ambassadors.

On the same day, Mr. Litvinov informed President Roosevelt that the Soviet Government agreed that, "preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals", the Soviet Government would not take any further steps to recover "amounts admitted to be due or that may be found to be

due it, as the successor of prior Governments of Russia, or otherwise, from American nationals", and thereby released and assigned all such amounts to the Government of the United States, the Soviet Government "to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment."

The assignment was on the same day accepted by President Roosevelt in his letter to Mr. Litvinov (Off. doc., p. 14).

In addition to the aforesaid assignment the Soviet Government, on the same day, agreed—

> that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

On the same day, President Roosevelt and Mr. Litvinov issued a joint statement to the following effect:

> In addition to the agreements which we have signed today, there has taken place an exchange of views with regard to methods of settling all outstanding questions of indebtedness and claims that permits us to hope for a speedy and satisfactory solution of these questions which both our Governments desire to have out of the way as soon as possible.

On November 18, 1933, Secretary Hull stated that (Off. doc., p. 18):

> the peoples of the United States and Russia, after a frank exchange of views at Washington, have resumed normal relations * * *. The badly confused world situation will be improved by this natural and timely step * * *.

On November 17, 1933, the Acting Secretary of State Phillips issued circular instructions to all American diplomatic missions (Off. doc., p. 19), stating in part as follows:

> Following an exchange of communications between the President and the Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, covering outstanding questions in the relations between the United States and the Soviet Union and the arrival at an understanding with respect to methods of settling the question of debts and claims, the President communicated to Mr. Litvinov in a note dated November 16, 1933, the decision of the Government of the United States to establish diplomatic relations with the Soviet Union.

On November 22, 1933, Mr. Litvinov wrote to President Roosevelt (Off. doc., pp. 19 and 20), stating that—

> I avail myself of this opportunity to express once more my firm conviction that the official linking of our two countries by the

> exchange of notes between you, Mr. President, and myself will be of great benefit to our two countries and will also be conducive to the strengthening and preservation of peace between nations towards which our countries are sincerely striving. I believe that their joint efforts will add a creative factor in international affairs which will be beneficial to mankind.

President Roosevelt replied to Mr. Litvinov on November 23 (Off. doc., p. 20), in part, as follows:

> I am profoundly gratified that our conversations should have resulted in the restoration of normal relations between our peoples and I trust that these relations will grow closer and more intimate with each passing year. The cooperation of our governments in the great work of preserving peace should be the corner stone of an enduring friendship.

It needs no argument to demonstrate, for it clearly appears in these notes, separately and collectively, that the two governments intended thereby to initiate the settlement of the claims and counterclaims of the two governments and their nationals. It is well known that these claims constituted the outstanding dispute between the two governments.

In the Annual Report of the Secretary of the Treasury on the State of the Finances for Fiscal Year Ended June 30, 1936 (75th Cong., 1st Sess., House Document No. 5), at page 470, the total in-

debtedness of the Russian Government to the United States, with accrued and unpaid interest thereon, as of November 15, 1936, is stated to be $366,101,897.85. In addition to that indebtedness, it is understood that citizens of the United States have private claims against the Russian Government to the extent of approximately $500,000,000. The total indebtedness of the Russian Government to the United States Government and United States citizens is, therefore, in the neighborhood of perhaps a billion dollars.

The friendly relations between the two great nations were for fifteen years imperilled by these claims. Consequently the President of the United States invited the discussions which culminated in this agreement and the recognition by the United States Government of the Government of the Union Soviet Socialist Republics. It was these negotiations, of which this agreement constituted an essential part, which brought about the establishment of friendly relations and intercourse between one great nation of 125,000,000 people and another great nation of 160,000,000 people—one of the outstanding international events of recent history.

The court below treated this entire matter as though it was nothing more than an ordinary dispute between two private parties, and thus the respondents seek to have this Court treat it.

This case is not on the plane of an ordinary private law transaction. We are dealing with rela-

tions and agreements between two sovereign governments. Different considerations are, therefore, applicable. This case is particularly one of public law, and calls for the rule of broadest construction and liberality.

There is involved herein not merely the right of the United States, but also the duty to discharge an international obligation which it has assumed, an obligation of good faith in the execution of an engagement to settle "all questions outstanding between our countries", and particularly "all outstanding questions of indebtedness and claims." In an effort to achieve that result the two great nations entered into this agreement whereby the Soviet Government made the assignment herein concerned. The good faith of this nation might be questioned if, having entered into the agreement and having accepted the assignment, the agreement were now to be defeated on the ground of conflict with our nation's public policy, and *a fortiori* any local public policy of a political subdivision of the nation. But the contention of the respondents herein is that our federal courts should apply an alleged policy, of one individual state, which would completely disable the Government of the United States of America from discharging its obligations assumed under a solemn international agreement. The correct principles which should be applied herein were stated by this Court in the case of

Oetjen v. *Central Leather Co.*, 246 U. S. 297, at 303, wherein it was said:

> The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign State to be reexamined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nations."

Nor does this case involve merely the right to collect this bank deposit, or similar deposits. The issue herein has a deeper and broader significance. The motion made by respondents herein strikes at the very heart of the agreement between the United States Government and the Soviet Government whereby friendly relations were once more established between the two countries. The official documents setting forth the correspondence between the two governments demonstrate clearly that it was "the outstanding questions of indebtedness and claims" which for many years constituted one of the main sources of dispute. If the Government

of the United States is rendered incapable of realizing the amounts assigned to it by the Soviet Government, the effect may be to render the entire agreement nugatory and make it impossible for the United States Government to assist its own nationals in the settlement of their claims, as well as the claims of the United States Government itself, against the Soviet Government and its nationals. The agreement concluded between the two governments would be rendered meaningless, so far as it gave any benefit or compensation to the United States Government and to United States citizens.

The United States Government owes good faith to the Soviet Government not only in the making of the agreement but also in carrying it out. By this agreement the United States Government undertook to account to the Soviet Government for the amounts realized thereunder. Mr. Litvinov's letter (November 16, 1933) in making the assignment, states that it is "to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment." In his reply, President Roosevelt states that "I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment." This procedure for an accounting of the "amounts realized" shows that the assignment of claims is a part of a general

settlement of all claims and counterclaims. The Government of the United States of America should not, by a decision of this case on the ground of public policy be placed in a position where it cannot enter further negotiations freely and unhampered, with the full strength of having faithfully lived up to the letter and spirit of the agreement.

But even if we assume the correctness of respondents' theory that the public policy of an individual state can have any force and effect in an international situation such as we have here, what is that public policy which they seek to have applied? Certainly there is no public policy which calls for the protection of this depositary bank, or these respondents. They have no rights in and to this fund, but only an obligation to pay to whomever may be entitled thereto. Hence, there is no occasion for any application of any public policy in their favor. The only possible manner in which any New York, or even United States, public policy could operate in this proceeding would be in order to protect the Metal Company, a Russian national, from having its business nationalized, and its assets and liabilities taken over by its own Government. Of course, aliens, like citizens, are protected by our Constitution from being deprived of property without compensation, by our own Government. But it is a strange and dangerous doctrine to assert that our Constitution pro-

tects aliens from being deprived of their property by their own Government. All the more dangerous is such a doctrine when applied in connection with the fulfillment of an international agreement. Certainly it is not for the Government of the United States, and much less for the Government of a State, or their Courts, entrusted with the duty of carrying out this agreement with the Soviet Government, to erect safeguards for the protection of nationals of the Soviet Government against that Government itself.

There is nothing unique in a situation in which a sovereign, by operation of its own law, acquires title to or right in property of one of its nationals. There certainly is nothing which forbids our courts from giving effect to any title or right so acquired.

In *Sultan of Turkey* v. *Tiryakian,* 162 A. D. 613, affirmed 213 N. Y. 429, a foreign sovereign who by operation of the law of his sovereignty became the administrator and thereby acquired New York property of one of his subjects upon the intestate decease of that subject, was permitted to recover it, without any question being raised as to whether such a transfer was or was not conformable to our notions as to the proper disposition of private property upon intestate decease.

A departure from such a rule is urged upon this court merely because a sovereign has acquired from one of its own nationals a balance with a New York bank, through operation of a statute nationalizing the property, which statute, the respondents con-

tend, would be repugnant to our Constitution were it enacted by the United States or one of the States. Public policy, it is argued, dictates that the sovereign's claim based on such a statute be denied enforcement. The argument advanced by respondents postulates that foreign legislation must conform to the United States Constitution and also to local public policy in order to confer rights which will be enforced here. We submit that our domestic public policy is in no way concerned with the relations between a foreign sovereign and its nationals. If the latter may be aggrieved by the laws to which they are subject they must look to their own government or courts for redress. It is not the duty of our courts to grant them relief. On the contrary, when a foreign sovereign has acquired under its own law rights which it must come here to assert, our courts need examine only the sufficiency of the acquisition of the right of the foreign sovereign, and not the question of whether our own government could acquire that right in the same manner.

THE ACTION OF THE SOVIET GOVERNMENT IN NATIONALIZING THE MAJOR INDUSTRIES OF THAT COUNTRY IS NOT SUBJECT TO CONDEMNATION AS A "CONFISCATION" IN THE SENSE IN WHICH THAT WORD IS COMMONLY USED

The respondents' argument is, in essence, based upon their use of the word "confiscation." Almost without exception, respondents give to that word its most sinister connotation. But words must not blind our eyes to the facts. The Court must con-

sider what actually happened here. There is sufficient in this record to demonstrate that the Soviet Government, in making the whole industrial organization of Russia a part of the new national economy, did not merely go out and seize the property of individuals; it created a new system of national economy based upon public ownership of industry for the common welfare as that Government conceived it.

It is to be remembered that we are here dealing with the property of a Russian national, who, by virtue of his nationality, is bound and must abide by the acts of his own Government, including the whole scheme of nationalization of industries. The individuals who may have owned an interest or share in this industry, and whose interest or share was absorbed into the national plan, participate in whatever benefits accrue to the Russian nation and to Russian nationals, as a consequence of the economic order which they adopted for themselves.

We submit, therefore, that the situation with which we are here concerned cannot be said to involve a "confiscation", in the sense which that term has been used when confiscation is said to violate public policy.

Respondents assert also (Br. pp. 24–26) that the decree here in question is a "foreign penal law" and as such not enforcible in the forum. There is nothing in this record to support such an assertion. A general nation-wide system of nationalization as enacted by the decrees cannot on any theory be

brought within the classification of "penal laws". Furthermore, if this law be penal, it would follow that practically the entire economic and political system of the Soviet Union must meet with the same opprobrium in our courts. The consequences of such a doctrine are obvious.

We are here dealing with the acts of a foreign sovereign, recognized by us and the rest of the world, and entitled to the respect accorded to any other nation with whom we are on friendly terms. This recognized foreign sovereign nationalized its industries, including this Metal Company, in furtherance of a plan of so-called national economy, which in Russia was a theory of government having as a basis public ownership rather than private ownership of property. However we in this country may regard that as a theory of government, the fact remains that it is the theory of government which the Russian people have chosen for themselves. The fact that the people of the United States of America have chosen a different form of government and a different economic order, has no legal significance in this case. In fairness to the recognized foreign sovereign, we must assume, as that sovereign has declared, that the nationalized property is used for the common welfare of the Russian people. The situation, therefore, cannot be assimilated to the acts of bandits or insurrectionists in taking property and appropriating the same to their own individual uses.

THE FACT THAT THE RESPONDENTS ARE SUBJECT TO THE JURISDICTION OF THE SURROGATE'S COURT OF NEW YORK HAS NO BEARING ON THIS CASE

Respondents (Br. pp. 26–28) suggest that if the federal court should give the United States a judgment against these respondents, such a judgment could not be enforced in the Surrogate's Court of New York, since the latter could not recognize its binding force without doing violence to the public policy of the State of New York. To this contention there are two answers. First, the fact that the federal court judgment, once obtained, might be unenforceable is no reason for denying the petitioner's right to a judgment. Second, the petitioner's cause of action, if reduced to judgment, would thereafter be merged in the judgment, and the Surrogate's Court of New York would be precluded by that fact from enquiring whether or not the judgment was proper under the pleadings and proof before the federal courts. *Waterman* v. *Canal Louisiana Bank Co.,* 215 U. S. 33; *Riehle* v. *Margolies,* 279 U. S. 218.

THE ASSIGNMENT[2] CLEARLY COVERS THE CLAIM HEREIN ASSERTED

Respondents' brief, Point III (pages 50–53), states that "It is questionable whether the Litvinoff letter assigned title to the deposit to the United States." The respondents suggest that "a reasonable interpretation would be that it was intended to

[2] The text of the assignment is set forth in the Appendix to the Government's main brief, pp. 53–54; it appears also in the Official Document (pp. 13–14) submitted to the Court.

convey claims owing directly to the Government or its predecessors" and not to claims which the Soviet Government acquired by and through its decrees of nationalization. In the court below respondents sought to make this same narrow and technical constuction of this assignment, but that court ruled (Rec. 23) that "the language is too broad to permit of this construction", citing its similar ruling in the cases of *State of Russia* against *National City Bank,* 69 F. (2d) 44, 48, and *United States* v. *Bank of New York & Trust Co.,* 77 F. (2d) 866, 871. We submit that the ruling below is correct.

It is clear from the language of the assignment, which is broad and inclusive, that it was intended to transfer any amount due to the Soviet Government from American nationals. The funds held by the respondents are amounts due from the respondents, American nationals, to the Soviet Government.

We think the purpose and scope of the assignment were aptly summarized by Judge Manton, who in his opinion dissenting on other points in *United States* v. *Bank of New York & Trust Co., supra,* stated:

> The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing

> those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances.

The agreement of the Soviet Government, a friendly power with free access to the courts of the United States, not to sue in our courts to recover the amounts due it, requires the interpretation that *all* claims were assigned to the assignee. Any other interpretation would imply the abandonment of claims not assigned, and certainly that was not intended. The deliberately broad language of the assignment should be given effect.

The interpretation of the assignment to include claims to these funds of the Soviet Government, as made by the governments of Russia and the United States, is conclusive of the intention of the parties to the assignment. The correct interpretation is set forth in a note [3] addressed by Mr. Troyanowsky, the Soviet Ambassador, to the Secretary of State of the United States, dated July 21, 1936, reading as follows:

> The Ambassador of the Union of Soviet Socialist Republics presents his compliments to the Secretary of State and referring to the conversations concerning the suits instituted by the Government of the United

[3] This note was received by the Secretary of State subsequently to the making of this record, and therefore does not appear in the record.

States to recover assets of former Russian corporations nationalized by the government of the Union of Soviet Socialist Republics, has the honor to state that the 1933 agreement has in view those rights of the government of the Union of Soviet Socialist Republics which are subject to realization on the territory of the United States and which have passed to the Republics by virtue of its succession to former governments of Russia or by virtue of its succession to private companies on the basis of legislation concerning nationalization.

The basic nature of the amounts which were assigned by the government of the Union of Soviet Socialistic Republics in favor of the government of the United States is given in the exchange of communications between the President of the United States and Maxim M. Litvinoff, People's Commisar for Foreign Affairs of the Union of Soviet Socialist Republics on November 16, 1933, in the words: "for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals * * *." These words define these amounts as amounts passing to the government of the Union of Soviet Socialist Republics by virtue of succession, either succession to "prior governments of Russia", or succession "otherwise", for instance, to pre-revolutionary organizations and companies which were nationalized in accordance with Soviet legislation.

Attention of the Court is called also to the exchange of communications between the United States Government and the Soviet government, which are set forth in the Appendix to this reply brief, pp. 23 to 26.

In view of the above, we submit that there cannot be any question as to the intention of the parties to this assignment and the scope thereof.

In *State of Russia* v. *National City Bank of New York,* 69 F. (2d) 44, 48 (C. C. A. 2d), the court considered the scope of this assignment and stated that "it is apparent that the intent was to assign all the claims of the Soviet government to the United States."

Liberal construction of treaties is to be preferred. The construction adopted by the political department of the Government should be accepted. *Factor* v. *Laubenheimer,* 290 U. S. 276, 293–295; *Neilsen* v. *Johnson,* 279 U. S. 47, 52; *Tucker* v. *Alexandroff,* 183 U. S. 427, 437; *In re Ross,* 140 U. S. 435, 475.

The assignment, although not a treaty in the formal sense, is, as to the United States, an executive agreement with a foreign sovereign, and constitutes one of the conditions upon which recognition of the Soviet Government was granted. *State of Russia* v. *National City Bank, supra.* The rules applicable to the interpretation of treaties should be applied to the interpretation of such an executive agreement, not couched in the technical lan-

guage of a formal assignment, but contained in the diplomatic correspondence of recognition.

ADDITIONAL AUTHORITIES

Attention is called to the following authorities in addition to those cited in the main brief for petitioner.

In connection with Point I of the main brief, under which petitioner argues that the right to receive the amount of the bank deposit was governed by Russian law and was validly acquired by petitioner's assignor, see:

Long Island Water Supply Co. v. *Brooklyn,* 166 U. S. 685.

Blackstone v. *Miller,* 188 U. S. 189.

Converse v. *Hamilton,* 224 U. S. 243.

Pennington v. *Fourth National Bank,* 243 U. S. 269.

Bank of Jasper v. *First National Bank,* 258 U. S. 112.

United States of America v. *Prioleau,* Law Journal, 1866, N. S. vol. 35, Part I, Courts of Chancery, p. 7, Wood, V. C.

Sokoloff v. *National City Bank,* 239 N. Y. 158.

Jackson v. *Talmadge,* 246 N. Y. 133.

In connection with Point II of the main brief under which petitioner argues that there is no public policy which prevents enforcement of the claim, see:

Williams v. *Suffolk Insurance Co.,* 13 Pet. 415.

Respectfully submitted.

STANLEY REED,
Solicitor General.
DAVID E. HUDSON,
A. H. FELLER,
ALBERT LEVITT,
Special Assistants to the Attorney General.
HENRY MUNROE,
Special Attorney.
PAUL SWEENEY,
Attorney.

MARCH 1937.