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Case Digest

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CASE DIGEST*

I. ANTITRUST

Industrial Investment Development Corp. v. Mitsui & Co., Ltd.
671 F.2d 876 (5th Cir. 1982)

Industrial Investment Development Corp. and two of its Hong Kong subsidiaries brought suit against a Japanese corporation, Mitsui & Co., Ltd., and its American subsidiary for violation of the Sherman Antitrust Act (Act). Plaintiffs claimed that the defendants conspired to keep them from both harvesting trees in Indonesia and exporting the lumber to the United States and other countries, thereby unreasonably restraining the foreign commerce of the United States and violating sections one and two of the Act. The District Court for the Southern District of Texas granted summary judgment for the defendants on the basis of the act of state doctrine. The Fifth Circuit reversed and remanded this decision. On remand, the defendants were again granted summary judgment, this time on the grounds that their conduct was beyond the territorial jurisdiction of the antitrust laws.

On appeal the defendants argued that competition with the plaintiffs did not substantially affect U.S. foreign commerce. The rationale for the defendants' argument was that since all of the fruits of the competition were exported to Japan, their activities fell outside the scope of the Act. The Fifth Circuit found that "[t]he competition between two American importers to obtain a source of supply on foreign territory affects the foreign commerce of the United States."¹ On the basis of this finding, allegations that an American corporation conspired, with the assistance of a foreign corporation, to eliminate a potential American competitor in the purchase of logs and importation of lumber, would be sufficient to withstand a motion for summary judgment.

The second issue facing the court was whether a principle of comity, international law, or any conflicts of law analysis, in spite of jurisdiction under the Act, prevented the court from hearing the

* This Case Digest is a new addition to the *Lawyer of the Americas*. It offers a brief factual summary and analysis of recent cases arising under international law.

1. 671 F.2d 876, 883.

case. The act of state doctrine had been eliminated as a defense in the first appeal. The court found that jurisdiction of the court would not be declined on the basis of any principles of comity, international law, or conflicts of law.

The court addressed the question of the plaintiffs' standing to sue. The defendants argued that the plaintiffs had not alleged "antitrust injury." The court dismissed this argument and found that the requisite standing existed. The court also found the doctrine of forum non conveniens to be inapplicable. Finally, the court determined that both the antitrust claim and the nonfederal tort claim should be resolved at the same trial.

II. EXPROPRIATION

Ethiopian Spice Extraction Share Co. v. Kalamazoo Spice Extraction Co.,
543 F. Supp. 1224 (W.D. Mich. 1982)

On February 3, 1975, the Ethiopian government expropriated the shares of the Ethiopian Spice Extraction Co. (ESESCO). Kalamazoo Spice Extraction Co. (Kal-Spice), a Michigan corporation, held approximately 80% of ESESCO's shares. ESESCO brought suit against Kal-Spice to recover monies owed for delivery of goods prior to expropriation. Kal-Spice counterclaimed against ESESCO and the Ethiopian government alleging wrongful expropriation of its investment in ESESCO. The issue for the court was whether the act of state doctrine barred consideration of Kal-Spice's counterclaim.

The act of state doctrine prohibits United States courts from judging the acts of a foreign government unless there is a treaty or other unambiguous agreement which provides controlling legal principles. A treaty was in existence between Ethiopia and the United States but the court refused to use it as an exception to the act of state doctrine. The court refused to use the treaty under the facts of this case because of the high risk of judicial misconstruction. Kal-Spice presented the court with an alternative exception to the act of state doctrine in the form of the Hickenlooper Amendment which bars application of the doctrine where the expropriation is in violation of international law. The court adopted the Second Circuit's limited interpretation of this amendment set

forth in *Banco National de Cuba v. First National City Bank*,² restricting its applicability to circumstances where the foreign government or one of its agents attempts to market expropriated American assets in the United States. The facts of this case did not allow the court to apply the limited interpretation. Finally, Kal-Spice argued that expropriation of the shares took place in Michigan since that was the situs of the shares. The court rejected this argument and reaffirmed the general rule that the legal situs of the shares is the place of incorporation. The court found for ESESCO on its contract claim and barred Kal-Spice's counterclaim on the basis of the act of state doctrine.

III. IMMIGRATION

United States v. Anton,
683 F.2d 1011 (7th Cir. 1982).

A deported alien was convicted of violating 8 U.S.C. § 1326 proscribing the reentry of deported aliens. The statute makes it a felony for an alien who has been deported from the United States to thereafter be found in this country at any time unless the Attorney General has expressly consented, in advance, to the alien's reapplying for admission. The defendant-alien argued that the district court denied him a fair trial by instructing the jury that the could not consider evidence of the alien's belief that he had the consent of the Attorney General to reenter. The defendant in this case contended that such a belief, if reasonable, constitutes a defense under section 1326. The district court refused to recognize this defense.

The Court of Appeals for the Seventh Circuit reversed and remanded, holding that there is a mental state requirement under section 1326 and, that an alien's alleged reasonable belief that he had the consent of the Attorney General constituted a viable mistake-of-law defense against a section 1326 charge. The court concluded that the omission of specific intent language in the statute was not alone sufficient to establish that intent was irrelevant. The court also looked at the severity of punishment involved and noted that strict liability is, for the most part, inappropriate where the offense is punishable by imprisonment. Finally, the court recognized that under principles of common law, intent generally re-

2. 431 F.2d 394 (2d Cir. 1970), *rev'd on other grounds*, 406 U.S. 759 (1972).

mains an element of a criminal offense.

IV. JURISDICTION

United States v. Smith,
680 F.2d 255 (1st Cir. 1982).

In October, 1980, approximately 100 miles off of the Massachusetts coast and outside the territorial jurisdiction of the United States, marijuana was transferred from a stateless vessel to an American ship. The United States Coast Guard seized both vessels and arrested their crewmen. The defendant was convicted under 21 U.S.C. § 955a. He appealed claiming that the charges against him should be dismissed since Congress did not have the authority to extend criminal jurisdiction to stateless vessels outside the territory of the United States.

The court of appeals found that congress intended to extend extraterritorial jurisdiction, and found authority for the extension in the principle of objective territorial jurisdiction. This principle extends jurisdiction to acts performed outside the United States which produce adverse effects within the United States. The cause of the harm is treated as having the same situs as the location of the harm. The objective territorial principle requires significant nexus between the acts of the stateless vessels and the country effectuating jurisdiction. Here the court found that since both a United States citizen and vessel were involved, and given the close proximity to the United States' coastline, the defendant's acts had an effect in the United States.

United States v. Marino-Garcia,
679 F.2d 1373 (11th Cir. 1982)

Coast Guard officials approached a stateless vessel on the high seas sixty-five miles off the west coast of Cuba and 300 miles from Florida. After boarding the vessel, they discovered approximately 57,000 pounds of marijuana. There was no evidence indicating that the contraband was intended for the United States. The crewmen were subsequently indicted under 21 U.S.C. § 955a. The crewmen sought dismissal of the indictment, arguing that the court had no subject matter jurisdiction over stateless vessels absent proof of a nexus between the vessel and the United States. The district court denied the motion, finding that jurisdiction over stateless vessels existed under the "protective principle", which requires proof that

the illegal activity threatens the security or governmental functions of the United States. The court concluded that drug trafficking constituted a threat of United States' security.

The court of appeals affirmed, but under a different rationale, holding that 21 U.S.C. § 955a extends the criminal jurisdiction of the United States to any stateless vessel in international waters, engaged in the distribution of controlled substances. The court concluded that under international law any nation has the right to assert jurisdiction over stateless vessels on the high seas. Furthermore, there is no requirement of a nexus between the stateless vessel and the country seeking to effectuate jurisdiction. Jurisdiction exists solely as a consequence of the vessel's status as stateless. The instant decision is the first to hold that the criminal jurisdiction of the United States under 21 U.S.C. § 955a is extended to *all* stateless vessels on the high seas engaged in the distribution of controlled substances.