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## Case Notes

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## CASE NOTES

SOVEREIGN IMMUNITY—STATE DEPARTMENT SUGGESTION DETERMINATIVE: *Isbrandtsen Tankers, Inc. v. President of India (India Supply Mission)*, 446 F.2d 1198 (2d Cir. 1971).

In this action for damages, Isbrandtsen, which had entered into a charter party for the transport of grain to India, claimed that the appellee had waived immunity by the contract which provided that disputes arising under the contract would be determined by a specified district court in the United States.

While the court acknowledged that the actions of the Indian government might well be purely private commercial transactions, it nevertheless HELD that because of the State Department's suggestion of immunity, the court need not reach questions involving a characterization of actions taken by a government.

The court further held that the suggestion of immunity also overrides a contractual waiver by the sovereign of the kind involved in the instant case.

ADMIRALTY—ACTION FOR WRONGFUL DEATH LIES UNDER GENERAL MARITIME LAW: *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

The Supreme Court has, in the *Moragne* case, overturned an anomaly in United States maritime law which is that no civil law action would lie for wrongful death. *The Harrisburg*, 119 U.S. 199 (1886). In this case the widow of the deceased brought suit to recover damages for wrongful death against States Marine Lines, Inc., the owner of the vessel upon which her husband was killed. The action was based on negligence and the unseaworthiness of the vessel. The vessel was in Florida territorial waters at the time of decedent's death.

By overruling *Harrisburg*, the Court has brought United States maritime law in line with the general policy of maritime law elsewhere. More significantly, however, is that the case may affect treatment of choice of law principles by courts which previously have strained either to find foreign law or United States law applicable in order to achieve just results.

ALIENS—STATUTORY CITIZENSHIP SUBJECT TO CONGRESSIONAL "CONDITION SUBSEQUENT": *Rogers v. Bellei*, 401 U.S. 815 (1971).

Aldo Bellei acquired dual citizenship at his birth, his father being Italian and his mother a native-born American. He brought an action against the Secretary of State to enjoin him from enforcing section 301(b) of the Immigration and Nationality Act, which section required Bellei to reside in the United States for at least five years prior to reaching the age of 28 in order to retain his citizenship, requirement which Bellei did not meet.

The court held that Bellei was not born or naturalized within the United States and therefore did not come within the scope of the Fourteenth Amendment's citizenship definition. Since his statutorily established citizenship was, then, not constitutionally protected, such citizenship was validly subject to the control of a "condition subsequent" which could bring about its termination. Section 301(b) is such a condition subsequent.

**AVIATION—EFFECT OF WARSAW CONVENTION STATUTE OF LIMITATIONS UPON CARRIER'S LIABILITY:** *Molitch v. Irish International Airlines*, 436 F.2d 42 (2d Cir. 1970).

Plaintiff sued Irish International for injuries sustained when she fell down an exit ramp from International's aircraft at New York's John F. Kennedy International Airport. However, the suit was not filed until some 32 months after the accident. The defendant contended that the suit was barred by the two-year statute of limitations contained in the Warsaw Convention. Plaintiff argued that the Convention was inapplicable to international charter flights such as her own.

The court ruled that the Warsaw Convention is applicable to international charter flights, and the carrier's liability does not attach through its failure to include the statute of limitations in the passenger ticket.

**FOREIGN TRADE—CUSTOMS DUTIES, AMERICAN MANUFACTURER'S PROTEST, SECRETARY OF TREASURY'S DISCRETION:** *United States v. Hammond Lead Products, Inc.*, 440 F.2d 1024 (1971).

Hammond Lead sought to harness the countervailing duty provision of the Tariff Act of 1930 (section 303) with the American Manufacturer's Protest provision in section 516(b) in order to obtain the assessment of countervailing duties by reason of the action of a foreign government (Mexico), without the acquiescence of the Treasury Department in the assessment.

**HELD:** A countervailing duty is a penal exaction which Congress did not intend the courts to impose, should the Treasury be recalcitrant, on a protest by an American manufacturer, producer or wholesaler, and is not a "duty" within the meaning of the statute authorizing protest.

FEDERAL COURTS — FORUM NON CONVENIENS, FEDERAL COURT'S POWER TO REFUSE JURISDICTION: *Harrison v. Capivary, Inc.*, 334 F. Supp. 1141 (1971).

In an action to recover for various services, plaintiff performed for defendant corporation in his capacity as a corporate officer in Paraguay.

The District Court held that 28 U.S.C. § 1404(a), codifying and replacing the doctrine of forum non conveniens whenever the more convenient tribunal is a United States district court where the action "might have been brought," did not deprive federal courts of their inherent power to refuse jurisdiction of cases not within § 1401(a), that is, cases which should have been brought in a foreign jurisdiction, rather than in the United States. Thus, the court declined jurisdiction, deciding on balance that the action should have been brought in Paraguay.

ARBITRATION — CONSTRUCTION AND INTERPRETATION OF FEDERAL ARBITRATION ACT: *Joseph Muller Corp. Zurich v. Commonwealth Petrochemicals, Inc.*, 334 F. Supp. 1013 (1971).

In a proceeding upon a petition by a Swiss corporation to compel arbitration, respondent, Commonwealth Petrochemical, contended that there was never an agreement to arbitrate embodied in a contract. Preliminarily the court decided that the Arbitration Act provision requiring a trial on the issue of the existence of an agreement for arbitration does not require a trial where the court, after the submission of papers and a hearing, finds only a question of law on which it is fully informed.

The court then held that a written provision for arbitration coupled with a contract between the parties will satisfy the Arbitration Act requirement of a written provision in a contract "evidencing a transaction" involving commerce, even if such contract between the parties is unilateral or arises from correspondence.

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