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Foreign States-Removal Jurisdiction- Trial by Jury (Williams v. Shipping Corp. of India)

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and the United States courts must respect those foreign judgments that are consistent with our own notions of fair play.

FOREIGN STATES — REMOVAL JURISDICTION — TRIAL BY JURY — *Williams v. Shipping Corp. of India*, 653 F.2d 875 (4th Cir. 1981).

Appellant, Lenwood Williams, Jr., a United States citizen, filed this action in a Virginia state court for personal injuries allegedly sustained in his employment aboard a ship owned by the appellee, a corporation controlled entirely by the Government of India. Under Section 1603 of the Foreign Sovereign Immunities Act¹ (FSIA), appellee was considered a foreign state and thereby entitled to remove the case to federal court. Following removal, appellee moved to strike the appellant's demand for a jury trial; for when civil cases brought against a foreign state have been removed to federal court, the action may be tried without a jury.²

In opposition, appellant asserted that jurisdiction could be based on diversity of citizenship and removal thereunder does not proscribe trial by jury. Williams contended alternatively, that the FSIA was an unconstitutional violation of his seventh amendment right to a trial by jury. The district court held for appellee.

On appeal, Judge Field affirmed the lower court's rejection of Williams's contention that jurisdiction under the FSIA was not exclusive, and that jurisdiction could rest on diversity of citizenship as an alternative to the original jurisdiction granted to the district court for non-jury civil actions against a foreign state.³ The court adopted a decision from the Second Circuit, *Ruggiero v. Compania Peruana De Vaopres*,⁴ which held that Congress intended 28 U.S.C. § 1330 to create exclusive jurisdiction over actions of this type, and is, by its terms, limited to non-jury trials.

The court also found that appellant's seventh amendment claim was without merit, and noted that the Supreme Court has held that the amendment is inapplicable where no jury trial had been required at common law. The court reviewed history and cases, and summarily concluded that common law has never recognized a right to a jury trial

1. 28 U.S.C. § 1603 (1976).

2. 28 U.S.C. § 1441(d) (1976 and Supp. III 1979).

3. 28 U.S.C. § 1330 (1976).

4. 639 F.2d 872 (2d Cir. 1981).

when a foreign sovereign is a party. The court reasoned that in view of the potential sensitivity of actions against foreign states, trial by a court without a jury would tend to promote a uniformity in decision in actions where foreign governments are involved.

JURISDICTION - ACT OF STATE DOCTRINE - FOREIGN SOVEREIGN IMMUNITIES ACT—*International Association of Machinist and Aerospace Workers (IAM) v. Organization of the Petroleum Exporting Countries (OPEC)*, 649 F.2d 1354 (9th Cir. 1981) (as amended Aug. 24, 1981).

Appellant, International Association of Machinist and Aerospace Workers (IAM), brought this action for declaratory and injunctive relief against the Organization of Petroleum Exporting Countries (OPEC) and its member nations alleging that appellees had engaged in price fixing in violation of United States antitrust laws.¹ They also requested treble damages for the alleged violations. Refusing to recognize the jurisdiction of the court, the appellees did not appear, but their cause was argued by various amici, along with court-appointed experts. The district court initially dismissed OPEC as an entity (or organization), since OPEC had not been served. In the suit against the thirteen OPEC nations individually, the court granted judgment in favor of appellees based on its finding that the commercial activity exception to the Foreign Sovereign Immunities Act of 1976² was inapplicable.

On appeal, appellant contended that the lower court erred in its application of the FSIA, that under the pertinent "nature of the act" test, OPEC's activities—making agreements to fix prices—had been for profit, thus rendering them commercial.

The Ninth Circuit affirmed the district court's judgment, but on different grounds. Initially, the court adopted the district court's finding that the development and control of the terms and conditions for the removal of a prime natural resource was, indeed, the act of a sovereign state. The court reasoned, however, that the concerns espoused by the litigants were more appropriately addressed by the act of state doctrine, which "declares that a United States court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state."³

The court also refused to accept the appellant's contention that

1. Clayton Act, ch. 323, §§ 4-5, 38 Stat. 731 (1914) (current version at 15 U.S.C. §§ 15-16 (1976)). Sherman Anti-Trust Act, ch. 647, § 1, 26 Stat. 209 (current version at 15 U.S.C. §§ 1-2 (1976)).

2. 28 U.S.C. §§ 1602-1611 (1976).

3. 649 F.2d at 1358.