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is very great to try to convict the accused of the only offense which carries a penalty at all commensurate with what he would have received if his victim had not had such a strong constitution. G. W. S., '33.

INTERNATIONAL LAW—FOREIGN CORPORATIONS—SUIT WHERE GOVERNMENT NOT RECOGNIZED.—An act of Congress provides that "whenever the United States shall requisition any contract, . . . requisition, acquire or take over any ship," it shall make just compensation therefor, and that in case of dissatisfaction as to the amount awarded an action may be instituted against the United States in the Court of Claims for the alleged difference. The plaintiff was a Russian corporation organized under the Kerensky government and was the assignee of certain ship-building contracts which were taken over by the United States. The Kerensky regime was later overthrown and with the institution of the new government an edict was issued whereby all corporations were abolished and their assets confiscated. In a suit for additional compensation for the taking of the contracts, it was held that the corporation could maintain an action in the Court of Claims, no point being made of the plaintiff's corporate capacity, irrespective both of the non-recognition by the United States of the present Russian government, and of the lack of right on the part of American citizens to prosecute claims against the Russian government. *Russian Volunteer Fleet v. U. S.* (1931) 51 S. Ct. 229.

A court need not recognize the decrees of a government which has not been recognized either as a de facto or as a de jure government. *Nueva Anna* (1821) 6 Wheat. (U. S.) 193. The cases intimate, however, that courts may in their discretion, with a view to international policy and justice between the parties, accord such decrees extraterritorial effect in certain particular instances. Note (1925) 37 A. L. R. 747; see *Sokoloff v. Nat. City Bank* (1924) 239 N. Y. 158, 145 N. E. 917; *Aksionairnoye Obschestvo v. Sagor* (1921) 1 K. B. 456, reversed on other grounds (1921) 3 K. B. 532.

However, the question arises, as to right of the remaining directors of the corporation to sue and receive money for the corporation, its existence in Russia having been terminated, its assets confiscated, its function ended, and its stockholders scattered. No issue is made of this point in the present case, the defendants admitting the right of the plaintiffs to maintain this action for and in the name of the corporation. In a similar situation where an action was brought by the remaining directors of a Russian corporation for money deposited in a New York bank, the New York court held that it made no difference that the corporation had been abolished and that the purpose for which it had been created had ceased; as long as there was a sufficient representation of the corporation the suit could be maintained in spite of the possibility of the defendant being subject to double liability. *Petrogradsky Mejunardony Kommerchesky v. Nat. City Bank* (1930) 253 N. Y. 23, 170 N. E. 479. In concluding the court said, "The directors, men of honor presumably, will be charged with the duties of trustees and will be

subject to prosecution if these duties are ignored." This is the only mention made of the possibility of other stockholders looking to the directors for payment of their share of the amount recovered. But where an action was brought by the remaining directors of a Russian insurance corporation, against a bank which was trustee of a sum deposited with it by the corporation in accordance with a statute for the benefit of creditors, the court held that because of the possibility of the defendant's being liable to the corporation's successors in foreign countries where the decrees of the Soviet government were recognized, the plaintiffs could not recover. *Russian Reinsurance Co. v. Stoddard* (1925) 240 N. Y. 149, 147 N. E. 703. The former case was distinguished from this one, in that in the first there was a legal liability, whereas in this case the liability was one enforceable in equity.

However, a further conjectural issue arises as to what would have been the status of the plaintiff in the instant case if the United States had recognized Russia at the time of this suit. Perhaps provisions for such situations would have been made by treaty. But if they were not and a suit were brought by the remaining directors, the Soviet decree might be disregarded upon the ground that it operated retroactively in the particular case.

T. L., '32.

MASTER AND SERVANT—INJURY OF CO-EMPLOYEE—SCOPE OF EMPLOYMENT.—Plaintiff was engaged in eating her lunch during the lunch hour at the place of her employment when another employee of the same concern jerked the chair from under her, causing her to fall. *Held*, the fellow servant's act was not in the scope of his employment, nor was there evidence sufficient to show a ratification by the employer of his conduct, sufficient to render the employer liable for the injuries sustained. *Gess v. Wagner Electric Mfg. Co.* (Mo. 1930) 31 S. W. (2d) 785.

Under the fellow-servant rule a master is not liable for the injuries to a servant caused by the negligence of a fellow servant engaged in the same general business where the master has exercised due care in the selection of his servants. *Martin v. Morrison* (1929) 32 F. (2d) 400; *Encarnacion v. Jamison* (1929) 251 N. Y. 218, 167 N. E. 422; *Walsh v. Eubanks* (Ark. 1931) 34 S. W. (2d) 762. The employee is held to have assumed the risks connected with the employment. But the doctrine does not apply when the servant has injured his fellow servant in a wilful, malicious, or reckless manner, provided he has acted in the scope of his employment. *Richard v. Amoskeag Mfg. Co.* (1919) 79 N. H. 380, 109 Atl. 88; *Alden Mills v. Pendergraft* (Miss. 1928) 115 So. 713.

The question of the scope of employment must be determined by what the servant was employed to perform and by what he actually did perform, rather than by the mere verbal designation of his position. *Marshall v. United Rys. Co. of St. Louis* (Mo. App. 1916) 184 S. W. 159; *Brayman v. Russell & Pugh Lumber Co.* (1917) 31 Idaho 140, 169 Pac. 932. Where some connection with the employment, or a motive for furthering and acting with reference to it is found, recovery has been allowed. Thus where