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Decisions of national courts relating to the most-favoured-nation clause, digest prepared by the Secretariat

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Decisions of national courts relating to the most-favoured-nation clause

Digest prepared by the Secretariat

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ABBREVIATIONS

GATT	General Agreement on Tariffs and Trade
EEC	European Economic Community
IMF	International Monetary Fund
TSUS	Tariff Schedule of the United States
U.S.C.	United States Code
U.S.C.A.	United States Code Annotated

Introduction

1. The present document, prepared by the Secretariat, contains a "Digest of decisions of national courts relating to the most-favoured-nation clause". As indicated in the report on its twenty-third session, the International Law Commission requested the Secretariat "to prepare on the basis of the collections of law reports available to it and of the information to be requested from Governments, a 'Digest of decisions of national courts relating to most-favoured-nation clauses'".[1] Accordingly, the Secretary-General, by a circular note dated 28 December 1971, invited the Governments of Member States to transmit to him, by 31 July 1972, materials and information concerning national courts' decisions relating to the most-favoured-nation clause. At the time of the preparation of the present digest, the Secretariat had received information from the Governments of Finland, France, Greece and the Netherlands.[2]

[1] *Yearbook . . . 1971*, vol. II (Part One), p. 347, document A/8410/Rev.1, para. 113.

[2] In reply to the Secretary-General's circular note mentioned above:

Argentina stated the following:

"Only indirectly and incidentally, our highest court, in ruling on the merits of an extraordinary appeal lodged against a decision by the High Court of Santa Fe which denied a claim based on the clauses of an international treaty, confirmed the impugned decision in a judgement of 9 December 1919, signed by Mr. Bermejo, Mr. González del Solar, Mr. Palacio and Mr. Figueroa Alcorta

(Continued on p. 118.)

2. The present digest is based on the information received from the Governments of the above-mentioned Member States. It also reproduces decisions and other relevant information found in various legal publications available, most particularly the *International Law Reports* and its predecessors.[3] The decisions have been arranged according to subject-matter, as indicated in the headings of the various sections of the digest; within each section, they have been presented in chronological order.

(Foot-note 2 continued)
y Méndez, and ruled ... 'that neither the appelant's invocation of the powers conferred upon consuls under the treaties concluded with the United Kingdom in 1825 (article 13) and with the Kingdom of Prussia and the States of the German Customs Union in 1857 (article 9), which he claims extend to consuls of the Kingdom of Italy by virtue of the most-favoured-nation clause inserted in the agreements concluded with that Kingdom, nor precedent—if any—would affect the scttlement of the point at issue under federal law. In the first place, since these were concessions granted subject to reciprocity, it would have been necessary to show that the Italian Government granted, or was prepared to grant, those same concessions to consuls of Argentina ... ' " (Argentina, *Fallos de la Corte Suprema de Justicia: con relación de sus respectivas causas*, vol. 130, p. 328). [Translation from Spanish.]

Australia made the following observations:

"There are no decisions of Australian courts relating to the most-favoured-nation clause. The reason is that in Australia it is only the national legislation implementing a treaty and not a treaty itself, which can be relied upon in the national courts. Although where required by a treaty the principle incorporated in the most-favoured-nation clause has been followed in relevant legislation such as the 'Customs Tariff', there is no legislation specifically providing that an individual has a general right to most-favoured-nation treatment as such."

Iran, referring to the most-favoured-nation clause, said that:

"although this clause has been inserted in certain of our treaties of establishment and trade treaties, it should be noted that its scope is extremely restricted in practice, for the following reasons:

"(1) Iranian courts apply the national la wof aliens in matters relating to their civil status;

"(2) The conditions attaching to the residence, establishment and work of foreigners, and to their immovable property, are—subject to reciprocity—identical for all aliens;

"(3) In trade matters, Iranian customs regulations are based on a single customs tariff and make no provision for any preferential régime."

Italy said that

"The absence of any specific ruling by Italian courts in this matters implies that thc insertion of the most-favoured-nation clause in bilateral or multilateral international instruments entails rights and obligations which must necessarily be attributed to the States as such and as a contracting party to the international instrument, that is, as a subject of international law. Accordingly, any dispute regarding the application or non-application of the most-favoured-nation clause acquires the character of an international dispute and, since it is the State that plays the active or passive role in the dispute as a subject of international law, a settlement of any such dispute must be arrived at through referral of the dispute to an arbitral organ or to an institutionally preconstituted international court."

United Kingdom of Great Britain and Northern Ireland observed that

"In the United Kingdom, in accordance with its constitutional practice, treaties concluded by the United Kingdom are not self-executing and do not form part of the law of the land. Before they come into force any necessary legislation is enacted to give effect to them. In many fields traditionally covered by m.f.n. clauses, the legislation of the United Kingdom makes no distinction by reference to nationality, and, accordingly, no specific legislation to give effect to the obligations under a m.f.n. clause is required. In these circumstances there is no occasion for the scope and operation of the m.f.n. clauses to come in issue before the courts of the United Kingdom. For this reason the Government of the United Kingdom are not in a position to transmit any material and information other than the explanation given in this Note concerning the decisions of the courts relating to m.f.n. clauses."

I. The most-favoured-nation clause in matters relating to trade and customs

Thomas W. Bartram v. *William H. Robertson*
United States Supreme Court, 23 May 1887
United States of America: Reports, *vol. 122*,[4] *pp. 116* et seq.

3. The plaintiffs were merchants doing business in New York, and in March and April 1882, they made four importations of brown and unrefined sugars, the produce and manufacture of the Island of St. Croix, a part of the dominions of the Kingdom of Denmark. The goods were regularly entered at the custom house of New York, the plaintiffs claiming that they should be admitted free of duty under the Treaty with Denmark of 26 April 1826, because like articles, the produce and manufacture of the Hawaiian Islands, were, under the Treaty of 30 January 1875 between the United States and the Hawaiian Islands, admitted free of duty. The defendant, however, who was the collector of the port of New York, treated the goods as dutiable articles, and, against the claim of the plaintiffs, exacted duties upon them which they paid to the collector under protest in order to obtain possession of their goods. They then brought the present action against the collector to recover the amount thus paid. The action was commenced in a court of the State of New York, and, on the motion of the defendant, was transferred to the Circuit Court of the United States. The defendant demurred to the complaint, on the ground, among others, that it did not state facts sufficient to constitute a cause of action against him. The Circuit Court sustained the demurrer, and ordered judgment for the defendant; and the plaintiffs brought the case for review. The Supreme Court, which affirmed the judgement, said:

The duties for which this action was brought were exacted under the Act of the 14th of July, 1870, as amended on the 22d of December of that year ... The Act is of general application, making no exceptions in favor of Denmark or of any other nation. It provides that the articles specified, without reference to the country from which they come, shall pay the duties prescribed. It was enacted several years after the Treaty with Denmark was made.

That the Act of Congress as amended, authorized and required the duties imposed upon the goods in question, if not controlled by the treaty with Denmark, after the ratification of the treaty with the Hawaiian Islands, there can be no question. And it did not lie with

[3] *Annual Digest of Public International Law Cases* (London), J. Fischer Williams and H. Lauterpacht, eds., vols. 1 and 2 (covering the years 1919-1924), A. D. McNair and H. Lauterpacht, eds., vols. 3 and 4 (years 1925-1928), H. Lauterpacht, ed., vols. 5-7 (years 1929-1934); *Annual Digest and Reports of Public International Law Cases*, H. Lauterpacht, ed., vols. 8-16 (years 1935-1949) (both publications referred to hereafter as *Annual Digest*); *International Law Reports*, H. Lauterpacht, ed., vols. 17-23 (years 1950-1956), H. and E. Lauterpacht, eds., vol. 24 (year 1957); E. Lauterpacht, ed., vol. 25 (1958-I), vol. 26 (1958-II) and vols. 27 *et seq.*

[4] *United States Reports*, vol. 122, *Cases adjudged in the Supreme Court at October Term, 1886* (New York, Banks Law Publishing, 1921). Volumes in this series are referred to hereafter in this document as *U.S. Reports*.

the officers of customs to refuse to follow its directions because of the stipulations of the treaty with Denmark. Those stipulations, even if conceded to be self-executing by the way of a proviso or exception to the general law imposing the duties, do not cover concessions like those made to the Hawaiian Islands for a valuable consideration. They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that, in the imposition of duties upon goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favor of goods of like character imported from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect. But they were not intended to interfere with special arrangements with other countries founded upon a concession of special privileges. The stipulations were mutual, for reciprocal advantages. "No higher or other duties" were to be imposed by either upon the goods specified; but if any particular favor should be granted by either to other countries in respect to commerce or navigation, the concession was to become common to the other party upon like consideration; that is, it was to be enjoyed freely if the concession were conditional.

The treaty with the Hawaiian Islands makes no provision for the imposition of any duties on goods, the produce or manufacture of that country, imported into the United States. It stipulates for the exemption from duty of certain goods thus imported, in consideration of and as an equivalent for certain reciprocal concessions on the part of the Hawaiian Islands to the United States. There is in such exemption no violation of the stipulations in the treaty with Denmark, and if the exemption is deemed a "particular favor" in respect of commerce and navigation, within the first article of that treaty, it can only be claimed by Denmark upon like compensation to the United States. It does not appear that Denmark has ever objected to the imposition of duties upon goods from her dominions imported into the United States, because of the exemption from duty of similar goods imported from the Hawaiian Islands, such exemption being in consideration of reciprocal concessions, which she has never proposed to make.

Our conclusion is that the treaty with Denmark does not bind the United States to extend to that country, without compensation, privileges which they have conceded to the Hawaiian Islands in exchange for valuable concessions. On the contrary, the treaty provides that like compensation shall be given for such special favors. When such compensation is made it will be time to consider whether sugar from her dominions shall be admitted free from duty.

James F. Whitney et al. v. *William H. Robertson (Collector of the Port of New York)*
United States of America Supreme Court, 9 January 1888 U.S. Reports, vol. 124, pp. 190 et seq.

4. The plaintiffs were merchants doing business in New York; and in August 1882, they imported a large quantity of "centrifugal and molasses sugars", the produce and manufacture of the Island of San Domingo. These goods were similar in kind to sugars produced in the Hawaiian Islands, which were admitted free of duty under the Treaty of 30 January 1875 with the King of those Islands, and the Act of Congress, passed to carry the Treaty into effect. They were duly entered at the custom house at New York, the plaintiffs claiming that by the Treaty of 8 February 1867 with the Republic of San Domingo the goods should be admitted, free of duty, as similar articles, the produce and manufacture of the Hawaiian Islands. The defendant, the collector, refused to allow this claim, treated the goods as dutiable articles under the Acts of Congress, and exacted duties on them. The plaintiffs appealed from the collector's decision to the Secretary of the Treasury, by whom the appeal was denied. They then paid under protest the duties exacted, and brought this action to recover the amount. The Supreme Court said:

The treaty with the king of the Hawaiian Islands provides for the importation into the United States, free of duty, of various articles, the produce and manufacture of those Islands, in consideration, among other things, of like exemption from duty, on the importation into that country, of sundry specified articles which are the produce and manufacture of the United States... The language of the first two articles of the Treaty which recite the reciprocal engagements of the two countries, declares that they are made in consideration of the rights and privileges and as an equivalent therefore, which one concedes to the other.

The plaintiffs rely for a like exemption of the sugars imported by them from San Domingo upon the 9th article of the Treaty with the Dominican Republic, which is as follows: "No higher or other duty shall be imposed on the importation into the United States of any article the growth, produce or manufacture of the Dominican Republic, or of her fisheries; and no higher or other duty shall be imposed on the importation into the Dominican Republic of any article the growth, produce or manufacture of the United States, or their fisheries, than are or shall be payable on the like articles the growth, produce or manufacture of any other foreign country, or its fisheries."

...

... The 9th article of the treaty with that Republic... is substantially like the 4th article in the treaty with the king of Denmark... It is a pledge of the contracting parties that there shall be no discriminating legislation against the importation of articles which are the growth, produce or manufacture of their respective countries, in favor of articles of like character, imported from any other country. It has no greater extent. It was never designed to prevent special concessions, upon sufficient considerations, touching the importation of specific articles into the country of the other. It would require the clearest language to justify a conclusion that our Government intended to preclude itself from such engagement with other countries, which might in the future be of the highest importance to its interests.

...

... The act of Congress under which the duties were collected authorized their exaction. It is of general application, making no exception in favor of goods of any country. It was passed after the treaty with the Dominican Republic; and if there be any conflict between the stipulations of the treaty and the requirements of the law, the latter must control. A treaty is primarily a contract between two or more independent nations... For the infraction of its provisions a remedy must be sought by the injured party through reclamations upon the other. When the stipulations are not self executing they can only be enforced pursuant to legislation to carry them into effect, and such legislation is as much subject to modification and repeal by Congress as legislation upon any other subject. If the Treaty contains stipulations which are self executing, that is, require no legislation to make them operative, to that extent they have the force and effect of a legislative enactment. Congress may modify such provisions, so far as they bind the United States, or supersede them altogether. By the Constitution a treaty is placed on the same footing, and made of like obligation, with an Act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but if the two are inconsistent, the one last in date will control the other, provided always the stipulation of the treaty on the subject is self-executing. If the country with which the treaty is made is dissatisfied with the action of the legislative department, it may present its complaint to the executive head of the government, and take such

other measures as it may deem essential for the protection of its interests. The courts can afford no redress.

...

... It follows, therefore, that when a law is clear in its provisions, its validity cannot be assailed before the courts for want of conformity to stipulations of a previous Treaty not already executed. The duty of the courts is to construe and give effect to the latest expression of the sovereign will. "So far as a treaty made by the United States with any foreign nation can be the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal.

Consequently the judgement was affirmed.

Douglas Fairbanks v. *United States*
United States of America: Customs Court, Third Division, 29 October 1929
U.S. Treasury Decisions,[5] *pp. 371* et seq., *T.D. 43643.*

5. The subject of this protest was an automobile imported from England and assessed for duty at 33⅓ *per centum ad valorem* under paragraph 369 of the Tariff Act of 1922.[6] The plaintiff contended that the assessment of this countervailing duty on an automobile from Great Britain was in violation of the so-called "favored nation clause" in the 1815 treaty between the United States and Great Britain,[7] for the reason that automobiles from other countries were admitted at a lower rate of duty. From this plaintiff argued that this merchandise should not be assessed with a rate of duty in excess of the lowest rate imposed upon similar merchandise imported into the United States from any country. The Court said:

In our view there is no violation shown of the "most-favored-nation clause", for the reason that there is no discrimination in our law in that it treats all nations alike. The United States imposes the same rate of duty on automobiles from a particular country levies on automobiles imported from the United States. This is within the spirit of the article quoted above. It is within the power of the exporting country to fix the rate at which such merchandise shall enter the United States. There is mutuality of retaliation as well as reciprocity. The law of the United States makes no exceptions for or against Great Britain. Each country fixes the rate at which the countervailing duty shall be assessed. For the foregoing reasons, the protest is overruled.

United States v. *Domestic Fuel Corporation* et al.
United States of America: Court of Customs and Patent Appeals, 2 April 1934
Federal Reporter, Second Series, *vol. 71 (2d)*,[8] *pp. 424* et seq.
Annual Digest 1933—1934, Case No. 199.

6. This case involved the interpretation of the most-favoured-nation clause in treaties between the United States and Great Britain of 3 July 1815 and the United States and Germany of 14 October 1925. The Revenue Act of 1932 made coal subject to tariff "unless treaty provisions of the United States otherwise provide", and subject to the exception of coal imported from countries whose balance of trade in coal was favourable to the United States during the preceding calendar year. In 1931 such a favourable balance existed with Mexico and Canada, and in 1932 the duty was lifted on coal from those countries. The plaintiffs, importing corporations, paid duties under protest on shipments of coal from Great Britain and from Germany, and sued to recover, claiming that the Revenue Act of 1932 had not repealed or modified the "most-favoured-nation" treaties but had specifically recognized them in the section "unless treaty provisions... otherwise provide", and that the exemptions of Canadian and Mexican shipments entitled the plaintiffs to free importation. The United States Customs Court upheld this contention, and the United States appealed.

7. The Court held that the judgement must be affirmed. The treatment accorded the importations from Mexico and Canada and those from Germany and Great Britain resulted solely from a trade condition which was past in time when the instant Revenue Act became law. It was impossible for any one of the nations involved to alter a fact or condition of that nature. Since a tax on coal clearly could not be levied under the law in imports from Canada and Mexico, the according of different treatment to imports from other countries, based upon a condition incapable of being altered, was discriminatory in a legal sense as well as in fact. Accordingly, the duty assessments here complained of were in conflict with the respective treaty provisions involved. The Court said:

The treaty with Great Britain belongs to that class of treaties which are called "conditional most-favored-nation treaties", while that with Germany is unconditional.

The latter recites: "Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party." Article 7.

The treaty with Great Britain contains no such "unconditionally" or "without request and without compensation" provisions, and

[5] United States of America, *Treasury Decisions under Customs and other Law*, vol. 56, *July-December 1929* (Washington, D.C., U.S. Government Printing Office, 1930).

[6] Paragraph 369, § 1, of the Tariff Act of 1922, reads as follows:
"Automobiles, automobile bodies, automobiles chassis, motor cycles, and parts of the foregoing, not including tires, all of the foregoing whether finished or unfinished, 25 per centum ad valorem: If any country, dependency, province, or other subdivision of government imposes a duty on any article specified in this paragraph, when imported from the United States, in excess of the duty herein provided, there shall be imposed upon such article, when imported directly or indirectly from such country, dependency, province, or other subdivision of government, a duty equal to that imposed by such country, dependency, province, or other subdivision of government on such article imported from the United States, but in no case shall such duty exceed 50 per centum ad valorem."

[7] Convention to Regulate the Commerce between the United States and the Territories of His Britannic Majesty, dated 3 July 1815. The relevant article (article II), reads in its pertinent part as follows:
"No higher or other Duties shall be imposed on the importation into The United States of any articles, the growth, produce, or manufacture of his Britannic Majesty's Territories in Europe, ... than are or shall be payable on the like articles being the growth, produce, or manufacture of any other Foreign Country; ..."

[8] United States of America, *Federal Reporter, Second Series, Cases argued and determined in the United States Circuit Courts of Appeals, United States Courts of Appeals, United States Court of Customs and Patent Appeals*, vol. 71 (2d), July-September 1934 (St. Paul Minn., West Publishing, 1934). Volumes in this series are referred to hereafter as *Federal Reporter, Second Series.*

it is insisted on behalf of appellant that, even if it be found that the coal imported from Germany is entitled to free entry, the coal from Great Britain is not.

In other words, it is insisted that, although the treaty with Germany may be self-executing, the treaty with Great Britain is an executory contract which requires affirmative legislation by Congress to render it effective.

...

It would thus seem that the trial court associated the British Treaty of 1815 with the German Treaty of 1925, and held the former effective in these cases by reason of the latter being held effective.

While we agree with the general conclusion reached by the trial court, we do not place our decision as to the importation from Wales upon the ground adopted by that tribunal, but take the view that each case may be properly determined without reference to the other.

It is our opinion that the Revenue Act of 1932 intended to, and did, take cognizance of the most-favored nation clauses of all treaties to which the United States were then a party.

The British treaty carries the clear provision: "No higher or other duties shall be imposed on the importation ... of any articles [from Great Britain into the United States and vice versa] ... than are or shall be payable on the like articles ... of any other foreign country. ... " Article 2.

The treaty and the statute are laws *pari materia* and must be construed together. Such being the situation, so far as the cases here before us are concerned, we fail to perceive any necessity for considering questions growing out of distinctions between treaties, self-executing in their provisions, and treaties which are not self-executing. As we view the matter, since, in 1932, coal was legally imported into the United States from Canada and Mexico duty free, the law, as contained in the statute and the British treaty, entitled the coal imported in that year from the United Kingdom of Great Britain and Ireland to free entry, without any reference to the treaty with Germany.

...

NOTE In the case *George E. Warren Corporation* v. *United States* decided by the United States Court of Customs and Patent Appeals on 12 June 1934 (see *Federal Reporter, Second Series*, vol. 71, p. 434), the plaintiff corporation, joined with the plaintiff in the above case here separately protested against the assessment and collection of duties on certain importations of coal from Russia in 1932, claiming that although the balance of trade in coal in 1931 was favourable to Russia, and although no treaty whatsoever existed between the two countries at that time, the recognition of treaty provisions in the statute and the existence of "most-favoured-nation" clauses in treaties with other countries, and the admission of coal free of duty under the balance-of-trade provision, extended freedom from payment of duty to imports of coal from any country. The Court affirmed a judgement of the United States Customs Court overruling the protest: "... If a nation with which no most-favored-nation treaty exists must be permitted to have access to a country's markets upon the same terms as a country with which there does exist such a treaty, because of that treaty, what necessity exists for separate and distinct commercial treaties between nations? Most-favoured-nation treaties are always reciprocal in character, whether they be executory or self-executing. We have none with Russia. Russia may lay whatsoever condition her government may choose to lay upon importations of coal from the United States. Because we have contracts whereby we agree not do discriminate in duties upon the goods of one country, the consideration being that that country accords us the same treatment, are we in any wise legally bound to extend the terms of that treaty to a country which is in no wise bound to reciprocate? We think the answer obviously must be in the negative ... "

When Congress in section 601 of the Revenue Act of 1932 said that the taxes therein provided should be levied, "unless treaty provisions of the United States otherwise provide," we think the intention was merely to recognize and maintain such contracts as existed between the United States and other nations, and that the phrase has no application to importations from countries with which no treaties exist that do "otherwise provide". Surely only those who are parties to a contract are entitled to the benefits of it, only they are bound by it, and they are bound only to each other.

If nations not parties to a treaty are to obtain its favors and benefits in the same manner as those which are parties, we apprehend much confusion will arise in the realm of international commerce and law.

Let us suppose, for the purpose of illustration, that one of the nations with which the United States has a most-favored-nation treaty by reason of which, under our decision in the Domestic Fuel Corp. Case, *supra*, coal is entitled to free entry, should, for some reason, elect to abrogate or modify that treaty and impose duties discriminating against the products of the United States. Could it logically be maintained that we would continue bound to admit their coal duty free? We are unable to conceive our government as being so bound. But such would be the inevitable result if the principle here contended for by appellant should be adopted and applied.

We had no treaty with Russia in 1932 which provided "otherwise" than that a tax might be levied upon coal imported therefrom, and Russia was not, by any contract with the United States, in the category of most-favored nations. We owed no legal obligation to Russia and Russia none to us respecting the duties or taxes which should be levied upon products exchanged in commerce between the two countries.

There is nothing in the legislative history of the involved statute substantially all of which history is recited in our opinion in the Domestic Fuel Corp. Case, *supra*, which leads us to conclude that Congress intended that there should be any constructions of the act other than that here given it.

The Yulu Case
Bush et al. v. *United States*
United States of America: Circuit Court of Appeals, Fifth Circuit, 16 June 1934
Federal Reporter, Second Series, *vol. 71 (2d), pp. 635* et seq.

8. The Honduran motorboat *Yulu* was discovered by the coast guard on 28 October 1932, outside the three-mile zone but within twelve miles of the shore of the United States, within the limits of the New Orleans customs district. She was ordered to heave to, but changed her course and attempted to escape by proceeding away from the coast. She was pursued and captured within the twelve-mile limit. Her master declined to produce a manifest and none was found on board after a search. She was seized and taken to Mobile, Alabama, and there turned over to the collector of customs. Later, libels were filed against the vessel and cargo in the District Court for the Southern District of Alabama. The owners of the vessel and cargo filed motions to dismiss the libels on various grounds, all to the effect that the court was without jurisdiction. The motions to dismiss were overruled and a decree was entered forfeiting the vessel and cargo, under the provisions of sections 584 and 585 of the Customs Act of 17 June 1930.

9. On appeal, it was contended, *inter alia*, that the Republic of Honduras had entered into a treaty with the United States on 7 December 1927, which contained the most-favoured-nation clause; that by reason of said clause citizens of Honduras were entitled to rely upon the provisions of the treaty of 22 May 1924, between Great Britain and the United States. The Court of Appeals said:

An examination of other treaties between the United States and the countries that had negotiated treaties similar to the British treaty of 1924 discloses that they contain the most favored nation clause. Apparently it never occurred to any one that those countries would be entitled to the benefits of the British treaty because of that clause. This is tantamount to executive interpretation.

It is clear that the provisions of the Honduran treaty above quoted were intended to apply to legitimate trade and note to warrant a violation of the customs laws of the United States because of the most favored nation clause. The Yulu was not entitled to the benefit of the provisions of the British-American treaty of May 22, 1924.

Minerva Automobiles Inc. v. *United States*
United States of America: Court of Customs and Patent Appeals, 7 February 1938
Federal Reporter, Second Series, *vol. 96 (2d), pp. 836* et seq.
Annual Digest *1938-1940, Case No. 196.*

10. This was an appeal from the judgement of the United States Customs Court, which had overruled the protest of the appellant against the assessment by the Collector of Customs at the Port of Los Angeles of countervailing duty under paragraph 369 § 1 of the Tariff Act of 1922,[9] amounting to 960 Belgian francs per 100 kilos upon an automobile imported from Belgium. Appellant claimed that the automobile should have been assessed with the normal duties under the aforesaid paragraph in view of the most-favoured-nation clause contained in the Treaty of 29 June 1875 between Belgium and the United States.[10] The judgement was affirmed. The Court said:

Appellant has not attempted to prove the amount of customs duties which are imposed upon American automobiles by Belgium or by Germany, but states that Germany charges more than 25 per centum ad valorem duty thereon and cites a Treasury Decision to that effect. It, of course, is obvious that if appellant's contentions are sound, it is immaterial what rates of duty are charged by Belgium and Germany.

Appellant freely admits that if its contentions in the instant case are correct, every nation having a treaty containing a most-favored-nation clause of any character is entitled to have its automobiles exempted from the countervailing duty provided for in the paragraph in dispute. It points out that after the German treaty was entered into, the Reciprocal Trade Agreement Act was incorporated into the Tariff Act of 1930 as section 350 thereof, . . . and states:

". . . Therefore, to effectuate its policy of expanding foreign trade without disrupting treaty relations, and to avoid dispute and discrimination, Congress expressly extended all favors granted any one nation, to all other nations."

It is a matter of common knowledge that practically every nation of the world with whom we have commercial relations has a most-favored-nation treaty.

The trial court took the view that since Belgium had a conditional most-favored-nation treaty, it was not entitled to claim the same tariff treatment for automobiles as was extended to Germany which had an unconditional most-favored-nation treaty, and cited a number of decisions as bearing on this phase of the case. None of these decisions involved the question presented here, since the tariff treatment extended Germany or extended to any nation having a treaty relationship comparable to that of Germany was not involved therein.

. . .

Here, as there, it is unthinkable that Congress had such a result as is contended for by appellant in contemplation when it enacted the countervailing duty provisions of said paragraph 369. It knew when it enacted the paragraph of the existence of the numerous most-favored-nation treaties and it must have known that if they were permitted to affect the paragraph its enactment would have been a useless and purposeless thing to do. We must not attribute to Congress the intention of performing such a futile and purposeless act.

It is, therefore, our conclusion that the trial court correctly held in substance, that it was the intent of Congress that the countervailing duty provision under paragraph 369 should supersede the said Belgian treaty in respect to the countervailing duty on automobiles. It is our judgment that no other holding can logically be reached without in effect finding that the paragraph of the tariff act in controversy is a nullity. This we must decline to do.

John T. Bill Co. Inc. et al. v. *United States*
United States of America: Court of Customs and Patent Appeals, 29 May 1939
Federal Reporter, Second Series, *vol. 104 (2d), pp. 67* et seq.
Annual Digest *1938-1940, Case No. 197.*

11. This was an appeal from the judgement of the United States Customs Court; there were involved two protests of importers (the cases having been consolidated for trial) by which they sought to recover such duties as were assessed as countervailing duties upon merchandise described as bicycle parts imported from Germany in 1931 and 1934. The merchandise was classified under paragraph 371 of the Tariff Act of 1930.[11] The import-

[9] See note 6 above.

[10] The first two paragraphs of article XII of this Treaty read as follows:

"In all that relates to duties of Customs and navigation, the two high contracting parties promise, reciprocally, not to grant any favor, privilege, or immunity to any other State which shall not instantly become common to the citizens and subjects of both parties respectively; gratuitously, if the concession or favor to such other State is gratuitous, and on allowing the same compensation, or its equivalent, if the concession is conditional.

"Neither of the contracting parties shall lay upon goods proceeding from the soil or the industry of the other party, which may be imported into its ports, any other or higher duties of importation or re-exportation than are laid upon the importation or re-exportation of similar goods coming from any other foreign country."

[11] Paragraph 371 of the 1390 Tariff Act reads as follows:

"Bicycles, and parts thereof, not including tires, 30 per centum ad valorem: said if any country, dependency, province, or other subdivision of government imposes a duty on any article specified in this paragraph, when imported from the United States, in excess of the duty herein provided, there shall be imposed upon such article, when imported either directly or indirectly from such country, dependency, province, or other subdivision of government, a duty equal to that imposed by such country, dependency, province, or other subdivision of government on such article imported from the United States, but in no case shall such duty exceed 50 per centum ad valorem." (*Federal Reporter, Second Series*, vol. 104 (2d), p. 68.)

ations were assessed with duty at 50 *per centum ad valorem*. Paragraph 371 provided a normal duty rate of 30 *per centum ad valorem*. The duties resulting from that rate were not in question, it being claimed in both protests that the assessments should be at that rate. The protests were predicated upon the Treaty of Friendship, Commerce and Consular Rights of 14 October 1925 between the United States and Germany, particularly upon article VII.[12]

12. The appellants stated that the action of the collector in exacting a duty of 50 *per centum ad valorem* was in violation of the unconditional grant of most-favoured-nation treatment accorded Germany in the above treaty in view of the fact that bicycle parts of worked iron were then admissible from other countries at a lower rate of duty. The entire contention rested upon the unconditional character of the treaty, it, in effect, being conceded that, upon the authority of a long line of decisions, by both the executive and judicial branches of the Government, the most-favoured-nation doctrine would not apply in this case were the treaty of the conditional type, such, for example, as was the treaty with Belgium involved in another case.[13] The judgement was reversed. The Court said:

That article VII of the treaty was in full force at the time of the respective importations here involved is not in question and various Treasury Decisions are cited which show that at those times merchandise of the kind involved was admissible from other foreign countries at a duty rate of only 30 per centum ad valorem.

...

From the language of the treaty, ... it seems clear to us that the levy of duties at the rate of 50 per centum ad valorem while similar merchandise was being admitted, or was subject to admission, from other countries at the rate of 30 per centum ad valorem, was in contravention of the treaty's provisions.

...

... Paragraph 371 of that act, 42 Stat. 885, was in the precise language of paragraph 371 of the 1930 act ... We think it was clearly understood that the intent and effect of the treaty was to modify such provisions of the tariff act in relation to importations from Germany, and Germany was not required to give compensation therefor in her own laws beyond assuring that merchandise imported from the United States should be treated in the same manner as like merchandise imported from other countries.

The treaty was reciprocal and it was self-executing, requiring no legislation other than its own enactment, so far as any matter here involved was concerned. There is no claim that the rate of duty which Germany was then assessing upon bicycle parts imported from the United States was any higher than the rate imposed upon those parts when imported from other countries, and the fact that such rate was higher than the basic rate imposed by the United States is not of legal moment.

There remains to be considered the contention made by counsel for the Government that the most-favoured-nation clause of the treaty with Germany was superseded by the Tariff Act of 1930, specifically (as to the merchandise here involved) by paragraph 371... of the act. As has been indicated, the insistence is that our decision here should be controlled by our decision in the Minerva Automobiles, Inc., case ...

We do not agree with this view. The cases are clearly distinguishable. In that case it was held that the conditional most-favoured-nation clause of the Belgian Treaty of 1875, had been superseded, as to the merchandise there involved, by paragraph 369 of the Tariff Act of 1922. So far as we are able to ascertain, there was no provision of law such as paragraph 369 in effect at the time of the ratification of the Belgian Treaty, hence that treaty did not have the effect of repealing or superseding any prior act of Congress.

When the German Treaty was ratified paragraph 371 of the Tariff Act of 1922 was in effect and the treaty, in our view, superseded it so far as importations from Germany were concerned, but the paragraph remained in effect as to importations from countries with which we had no commercial treaties or had only treaties of the conditional type. In order that those countries might have the benefit of the normal rate it was necessary that they should compensate by giving to importations from the United States a similar rate. The agreement between the United States and Germany was that each should receive the benefit of the lowest rate granted by it to any third country, "simultaneously and *unconditionally*, without request and *without compensation*" ... It was not required that in order to make applicable the rate of 30 per centum ad valorem on bicycle parts imported from Germany that country should give that rate to importations from the United States. It was only required that Germany admit importations from the United States at the lowest rate granted upon importations from any other country.

Such was the situation when the Tariff Act of 1930 was enacted. That act did not repeal paragraph 371 of the 1922 Act, ... but continued it. The general repealing clause in the Act of 1930 ran only to "All Acts and parts of Acts inconsistent with the provisions of this Act, [chapter]". Sec. 651, Tariff Act of 1930 ... There remained ample room for the application of paragraph 371 to importations from many countries other than Germany. At the time of the enactment of the 1930 tariff act the German Treaty was the only one of its type which had been ratified and embodied in the statutes at large, and we find no history connected with the passage of the tariff act which indicates any intention on the part of Congress to abrogate or supersede that treaty. It is well established, of course, that where a treaty and an act of Congress are in conflict, the latest in date must prevail ...

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[12] Article VII reads as follows:

"Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce or manufacture of any other foreign country.

"Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other High Contracting Party than are imposed on good exported to any other foreign country.

"Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party.

"...

"With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State, and regardless of whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege or immunity which shall hereafter be granted the nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals and vessels." (United States of America, *The Statutes at Large of the United States of America from December, 1925, to March, 1927* (vol. XLIV, Part 3 (Washington, D.C., U.S. Government Printing Office, 1927), p. 2137). (References to this publication in the text of the present document are given in the abbreviated form, "Stat." preceded by the number of the volume and followed by the page number, e.g. "44 Stat. 2137.)

[13] See para. 10 above.

Obviously the treaty with Germany marked the adoption of a new policy on the part of the United States. The history of the period is replete with statements to that effect, and, . . . it was contemplated that such new policy would be followed in the negotiation of additional treaties with other countries. We feel justified in concluding that these facts and the expressed intent must have been in the mind of Congress at the time of the enactment of the Tariff Act of 1930, and that had the Congress intended to alter such policy it would have been expressed in the act.

That the repeal of statutes by implication is not favored is familiar law, and the courts uniformly have intimated an even stronger disposition to apply the rule in cases where treaties are involved . . .

. . ., we are of the opinion that paragraph 371 of the Tariff Act of 1930,. . . did not repeal or supersede the unconditional most-favored-nation provisions of the treaty with Germany with respect to the merchandise involved, and, since we are of the opinion that the assessment of the duties here complained of was contrary to such provisions, we disagree with the conclusion reached by the Third Division.

Application of the Trade Agreement between Finland and the United Kingdom of Great Britain and Northern Ireland

Finland, Supreme Court of Administration, 12 March 1943 [14]

13. The duties imposed on certain goods in the trade agreement between Finland and the United Kingdom were to be applied also to goods imported from Germany in accordance with the most-favoured-nation clause between Finland and Germany. The court decided that after the United Kingdom had declared war on Finland, the most-favoured-nation clause was no longer applicable to Germany, and, consequently, the duties imposed on goods imported from Germany should be treated autonomously and not according to the trade agreement between Finland and the United Kingdom.

Colonial Molasses Co , Inc. v. *United States*

United States of America, Customs Court, Third Division, 22 January 1957

Federal Supplement, *vol. 152,*[15] *pp. 242* et seq.

International Law Reports, *1957, p. 670*

14. This was a proceeding on protest against the failure of the Collector of Customs to apply to 50 cans of bees' honey, imported into the United States from Cuba, the 20 per cent preferential reduction in customs duty provided under the Convention of Commercial Reciprocity between the United States and Cuba, signed at Havana on 11 December 1902. The Collector had assessed duty at the rate stipulated in the Tariff Act of 1930, as modified by GATT, signed at Geneva on 30 October 1947.[16] By an exclusive Agreement supplementary to the General Agreement on Tariffs and Trade, signed on the same day, the United States and Cuba had agreed to make inoperative the Treaty of 1902 and the Trade Agreement of 1934 for the period that the United States and Cuba were both contracting parties to the GATT. The Agreement of 1947 eliminated the preferential reduction of 20 per cent, provided for under the Treaty of 1902 and under the Trade Agreement of 1934 and provided for the flat rate agreed under the GATT. The plaintiff contended that the duty on bees' honey had been increased by the suspension or rendering inoperative of the Treaty of 1902, and that this increase in duty had not been authorized by the Congress.

15. The Customs Court held that judgement must be rendered for the United States. Under 350 (*b*) of the Trade Agreements Act (48 Stat. 944, as amended, 19 U.S.C. 1351 (*b*)), the President of the United States was not precluded from modifying any pre-existing preferential customs treatment of any article, provided that duties in force in 1945 were not thereby increased or decreased by more than 50 per cent. Even if the suspended Treaty of 1902 were taken into account, the duty on the imported honey was within the 50 per cent adjustment. The Court said:

The rate on honey imported from Cuba, established January 1, 1945, was 0.012 cents per pound, except as it might be reduced by a most-favored nation rate. There is no evidence that it had been reduced. The President proceeded, in exercise of authority conferred on him by Congress, to change the existing duty on bees' honey, product of Cuba, by eliminating the general preferential reduction of 20 per centum through the mechanism of continuing the inoperative status of the 1902 Cuban treaty and proclaiming that status as well as a new rate of 0.01 cent per pound under the General Agreement on Tariffs and Trade, *supra*. Even if the cited language of section 350 (*b*) means (and this is far from clear) that the Presidential authority to raise or lower duty on Cuban imports must take into account, as the basis for increase or decrease, the temporarily suspended treaty of 1902, the duty on honey imported from Cuba is, nevertheless, within the permitted 50 per centum adjustment . . .

C. Tennant, Sons and Co. of New York v. *Robert W. Dill*

United States of America: District Court, Southern District of New York, 16 December 1957

Federal Supplement, *vol. 158, p. 63*

International Law Reports, *1957, p. 677*

16. The plaintiff, an importer of Paraguayan tung oil, sought a preliminary injunction restraining the defendant from denying the entry into the United States of certain tung oil owned by it. On 2 September 1957, 662,540 pounds of tung oil, of a value of approximately $150,000, were shipped to the plaintiff from Asunción, Paraguay, followed by a further shipment of 485,012 pounds on 12 September. On 9 September 1957, the President of the United States, pursuant to the Agricultural Adjustment Act, issued a Proclamation imposing a quota of 96,452 pounds on imports of tung oil prior to 1 October 1957, and of not more than 131,566 pounds per month from October 1957 to January 1958. No reference was made to tung oil en route to the United States. On 7 October, the plaintiff attempted to obtain entry of his first shipment, but the defendant Collector of Customs permitted the entry of only 131,460 pounds being the entire quota for the month of October 1957. The second shipment was similarly rejected. The plaintiff

[14] Information received from the Government of Finland. No further information regarding this case is available.

[15] United States of America, *Federal Supplement, Cases Argued and Determined in the United States District Courts, United States Customs Courts*, vol. 152 (St. Paul, Minn., West Publishing Co., 1957). Volumes in this series are referred to hereafter as *Federal Supplement*.

[16] For the text of the GATT, see United Nations, *Treaty Series*, vol. 55, p. 194.

maintained that under the most-favoured-nation clause of the Agreement between the United States of America and Paraguay relating to reciprocal trade [17] signed at Asunción on 12 September 1946, it was entitled to the benefit of the provision of subparagraph 3 (*b*) of Article XIII of the GATT concluded at Geneva on 30 October 1947, exempting goods en route at the time of the establishment of import restrictions from the effect of such quotas. Paraguay was not a party to the latter Agreement.

17. The Court held that the motion for a preliminary injunction must be denied. An agreement providing for most-favoured-nation treatment as to duties and customs formalities does not require such treatment as to import restrictions and quotas. The "en route" clause of GATT accordingly had no application to trade relationships between Paraguay (which was not a party to the GATT) and the United States. In any event, the provisions of the Agricultural Adjustment Act would prevail over an inconsistent stipulation in an international agreement. The Court said:

Paraguay was not a signatory to GATT .... Nevertheless, the plaintiff contends that by reason of the "most-favored-nation" clause contained in Article I of the Paraguayan Trade Agreement, Paraguay is a beneficiary of the en route clause in GATT and that, therefore, the quota restriction here at issue does not apply to plaintiff's en route tung oil. This contention, in my opinion, lacks merit. Article I, subdivision 1, of the Trade Agreement with Paraguay in effect requires the signatories to grant each other unconditional and unrestricted "most-favored-nation" treatment in all matters concerning:

1. Customs duties and subsidiary charges of every kind;

2. The method of levying such duties and charges;

3. The rules, formalities and charges imposed in connection with clearing goods through customs;

4. All laws or regulations affecting the sale, taxation, distribution or use of imported goods within the country. Subdivision 2 of Article I in substance requires that each of the signatories be accorded treatment equal to that accorded any third country with respect to "duties, taxes or charges" or any rules or formalities.

The subjects covered by subdivisions 1 and 2 of Article I are described with clarity and particularity. The phrase "import restriction" and the word "quota" nowhere appear. Furthermore, those subdivisions do not, in my opinion, contain language from which their applicability to import restrictions involving the fixing of quotas can be implied.

...

It is interesting to note that Article I of the Trade Agreement with Paraguay is considerably more explicit and restrictive than are certain other parts of the Trade Agreement. For example, Article III, subdivision 1 of the Agreement employs the language "no prohibition or restriction of any kind" and in Article XII, subdivision 1 the all-inclusive terms "concession" and "customs treatment" are used.

It seems clear, therefore, that the "most-favored-nation" clause contained in the Trade Agreement with Paraguay is not sufficiently broad to entitle Paraguay and, hence, the plaintiff, to the benefits of the en route provision of GATT.

The Presidential Proclamation of September 9, 1957, while it does not expressly mention en route goods, nevertheless, declares "That for the period commencing September 9, 1957, and ending October 31, 1958, *the total quantity of tung oil entered* shall not exceed 26,000,000 pounds". (Emphasis supplied.) Since no exception was made as to en route tung oil, the presumption is that none was intended. This is particularly true in the case at bar where a contrary interpretation would seriously impair the effectiveness of the Proclamation by flooding the American market with large quantities of imported tung oil.

Energetic Worsted Corp. v. *United States*
United States of America: Customs Court, Third Division, 21 October 1963
Federal Supplement, *vol. 224, p. 606*
International Law Reports, *vol. 34, p. 217*

18. The United States collector of customs levied countervailing duties on the wool tops exported from Uruguay to the United States on the ground that the multiple exchange rate system in effect in Uruguay amounted to a subsidy for exports and conferred a bounty of grant on wool tops requiring the imposition of a countervailing duty pursuant to Section 303 of the Tariff Act of 1930. This was a proceeding on protest against the decision of the collector of customs. The plaintiff contended that the assessment of countervailing duties violated the "most-favoured-nation" clause in a Treaty of 21 July 1942 between the United States and Uruguay, because countervailing duties were not imposed upon wool tops exported from Argentina to the United States, although a multiple exchange rate system was in effect in that country.

19. The Court held that the protest must be overruled and judgement entered for the defendant. The multiple exchange rate system in effect in Uruguay at the time of the exportation conferred such a bounty on wool tops as to require the imposition of countervailing duties pursuant to Section 303 of the Tariff Act. The imposition of countervailing duties did not violate the "most-favoured-nation" clause. The Court said:

[17] United Nations, *Treaty Series*, vol. 125, p. 179. Article I of the agreement provides:

"1. The United States of America and the Republic of Paraguay will grant each other unconditional and unrestricted most-favored nation treatment in all matters concerning customs duties and subsidiary charges of every kind and in the method of levying such duties and charges, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the sale, taxation, distribution or use of imported goods within the country.

"2. Accordingly, articles the growth, produce or manufacture of either country imported into the other shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like articles the growth, produce or manufacture of any third country are or may hereafter be subject." (*Ibid* p. 180.)

Article III, paragraph 1 of that Agreement provides:

"1. No prohibition or restriction of any kind shall be imposed by the Government of the United States of America or the Government of the Republic of Paraguay on the importation, sale, distribution or use of any article the growth, produce or manufacture of the other country, or on the exportation of any article destined for the territory of the other country, unless the importation, sale, distribution or use of the like article the growth, produce or manufacture of all third countries or the exportation of the like article to all third countries respectively, is similarly prohibited or restricted." (*Ibid.*, p. 182.)

Plaintiff also claims that the levying of countervailing duties in the instant case was a violation of the most-favoured-nation clause of the Trade Agreement with Uruguay, since no countervailing duty was imposed on wool tops from Argentina. First, the record does not establish that Argentina's exchange system resulted in a bounty on wool tops. Second, as stated in defendant's brief:

> "Since the application of the countervailing duty statute is dependent upon a determination whether in *any* given country a grant or bounty has been paid or bestowed directly or indirectly, upon the manufacture, production, or export of any article or merchandise, and since the situation in any given country is unique, any comparisons with action taken or not taken by the United States Government with regard to the imports from any other countries are *not* relevant."

The General Agreement on Tariffs and Trade, ... under which the regular duties on the present wool tops were assessed, provides that countervailing duties may be imposed if not in excess of the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the product. Furthermore, it has been held *that the imposition of countervailing duties does not violate the* most-favoured-nation clause.

United States v. *Star Industries, Inc.*
United States of America, Court of Customs and Patent Appeals, 22 June 1972
International Legal Materials, Current Documents, *vol. XI, No. 5*,[18] *p. 1093*

20. This was an appeal from the decision and judgement of the United States Customs Court, sustaining a protest by Star Industries against the amount of duty assessed on brandy imported from Spain. The brandy had been classified under item 945.16, TSUS ($5 per gal.) according to the Presidential Proclamation No. 3564 which brought item 945.16 into existence.[19] The Customs Court ruled that it should have been classified under item 168.20 ($1.25 per gal.) and that the Presidential Proclamation was invalid and void. The Court of Customs and Patent Appeals found that the President did not exceed the authority granted him under section 252 (*c*) of the Trade Expansion Act of 1962 (19 U.S.C. 1882 (*c*)) in issuing Proclamation No. 3564. That proclamation was therefore valid and the judgement of the Customs Court was reversed.

21. The statutes specifically relied on for authority in Proclamation No. 3564 read as follows:

Trade Expansion Act of 1962, Section 252 (*c*) (19 U.S.C. 1882 (*c*)):

(*c*) Whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, maintains unreasonable import restrictions which either directly or indirectly substantially burden United States commerce, the President, may, to the extent that such action is consistent with the purposes of section 1801 of this title, and having due regard for the international obligations of the United States.

(1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or

(2) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

22. The Court said:

With regard to the reliance stated in Proclamation No. 3564 on Article XXVIII (3) of the GATT, the Customs Court stated:

> "As we read paragraph 3 of Article XXVIII of GATT it does not *require* suspension of trade agreement concessions on a most favored nation basis. In fact, favored nation treatment is not even mentioned or implied in paragraph 3. Under paragraph 3 a country having a principal supplying interest or a substantial interest is permitted to withdraw *substantially equivalent concessions initially negotiated with the applicant contracting party*. We construe this language merely to authorize reciprocal action on the part of contracting parties to GATT with respect to modification of tariff concessions, following a break down in negotiations and unilateral withdrawal of concessions by a contracting party."

The last two sentences of the above quote, though correct, are not pertinent to the question of whether unilateral withdrawal of concessions under Article XXVIII (3) must be made on a most-favored-nation basis. We are therefore left with the court's observation that that Article does not specifically mention most-favored-nation treatment, and its conclusions that such treatment is not implied or otherwise required by that Article.

Appellant contends that Article XXVIII (3) must be read within the context of the entire agreement and points to Article I of the GATT, which provides in pertinent part:

> "*Article I. General Most-Favoured-Nation Treatment*
>
> "1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation ..., any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

Appellant also argues that:

> "The very nature of Article XXVIII requires that actions taken under it be on a most favored nation basis. Such concessions cannot be withdrawn only as to a particular party. If withdrawn, the result is that they are also withdrawn as to all parties, *i.e.*, those who obtained the concessions on a most favored nation basis. Any arrangement whereby the particular concessions are continued as to all such other parties, but not the parties with which they were originally negotiated, is clearly not contemplated by Article XXVIII. In this case, Spanish brandy benefited from the original concession made to France, a member of the EEC, and there is little reason to continue the concession once it has been terminated as to the original contracting party."

Turning to the language of Article XXVIII (3), adverse effects on a plurality of countries from a unilateral withdrawal of concessions were clearly contemplated in this provision. A compensating mech-

[18] Washington, D.C., September 1972.

[19] "The events surrounding Proclamation No. 3564 are referred to in international trade circles as 'the chicken war'. Briefly, it appears that during the late fifties and early sixties, United States poultry producers had found a rapidly burgeoning market for frozen poultry in Germany. In 1962, however, the German import fees on poultry were replaced by import fees promulgated by the European Economic Community (EEC). The EEC import fees were about three times as high as the German fees they replaced, which adversely affected further importation of U.S. poultry into Germany. The action taken by the President in issuing Proclamation No. 3564 was in the nature of the compensatory withdrawal of previously proclaimed tariff concessions. The higher rates were calculated to increase the duty on EEC goods in an amount which would approximately balance the higher EEC import fees.

"Although Spain in not a member of the EEC, the brandy was charged the item 945.16 rate because that rate was instituted on a most-favored-nation basis. The products included under Proclamation No. 3564 were apparently chosen to be those imported almost exclusively from the member nations of the EEC." (*International Legal Materials (op. cit)*., pp. 1095-1096.)

anism is therein provided for three classes of countries which would be adversely affected by a unilateral withdrawal of a concession on a particular commodity, *i.e.*, the country with which the concession was originally negotiated, a country having a principal supplying interest in the commodity, and a country having a substantial interest in the commodity . . . .Article XXVIII (3) is therefore at least not inconsistent with the most-favored-nation principle. . . .

Reading Article XXVIII (3) in context with the rest of the GATT, it is clear that conformity with the most-favored-nation principle is required under that Article. One of the primary purposes of the GATT, recited in its preamble, was the "elimination of discriminatory treatment in international commerce". To this end, the most-favored-nation principle was embodied in Article I, quoted *supra*, and in numerous other GATT Articles. The principle has been described as the heart of the GATT. The GATT does contain some exceptions to the principle, but they are few in number and, when they do appear in the instrument, they are clearly spelled out. There is nothing in Article XXVIII (3) which would indicate that that Article was intended to be an exception to the principle.

Moreover, the "negotiative" history of the Article clearly establishes that the negotiators intended to have the most-favored-nation principle govern actions under it. One of the major changes made in the early drafting of the Article was the substitution of the phrase "withdraw the concession" for the phrase "suspend the application to the trade of the contracting party taking such action of substantially equivalent concessions", the intent being to change the effect of the Article from a discriminatory action to a non-discriminatory one. . . . Thus should there be any doubt that non-discriminatory (most-favored-nation) action was required by Article XXVIII (3), the negotiative history of the Article would settle that doubt. *Nielsen* v. *Johnson*, 279 U.S., 47, 52, 49 S. Ct. 223, 73 L. Ed. 607 (1929) and cases cited; W. Bishop, *International Law*, 171-172 (2d ed. 1962).

The question remains whether 19 U.S.C. 1882 (c) allows the President to take other than selective or discriminatory action, even when he determines that nondiscriminatory action is required by our international obligations. The Customs Court referred to 19 U.S.C. 1881, which provides:

"§ 1881. Most-favored-nation principle.

"Except as otherwise provided in this subchapter, in section 1351 of this title, or in section 401 (a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this subchapter or section 1351 of this title shall apply to products of all foreign countries, whether imported directly or indirectly."

The court considered that section 1881, when read together with the language in section 1882 (c) specifying action to be taken with respect to "products of such country or instrumentality" or "a trade agreement with such country or instrumentality", created an exception to the most-favored-nation principle in 1882 (c) proceedings. Thus the court did not specifically rule on the provisions of section 1882 (c) which limit the action the President may take "to the extent that such action is consistent with the purposes of section 1801 of this title and having due regard for the international obligations of the United States . . . ."

The purposes referred to are listed in 19 U.S.C. 1801 as follows:

"(1) to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce;

"(2) to strengthen economic relations with foreign countries through the development of open and *nondiscriminatory* trading in the free world; and

"(3) to prevent Communist economic penetration. [Emphasis added.]"

Thus the use of section 1882 (c) on a nondiscriminatory or most-favored-nation basis would not be inconsistent with the purposes referred to in that section.

With regard to the apparent conflict between our international obligations under the GATT and the statements in section 1882 (c) that action is to be taken against the country or instrumentality which maintains the unreasonable import restrictions, we find the following excerpt from the legislative history of the section most enlightening:

"Subsections (a) and (b) of section 252 of the bill together authorize action against burdensome foreign import restrictions. They do not, however, authorize action against foreign import restrictions which, though they may be legally justifiable, impose a substantial burden upon U.S. commerce. The amendment provides that whenever a country which has received benefits under a trade agreement with the United States maintains unreasonable import restrictions which burden U.S. commerce either directly or indirectly, the President may withdraw existing trade agreement benefits or refrain from proclaiming any negotiated trade agreement concessions on such products. Under this subsection the President may act only to the extent consistent with the purposes of the act and in exercising this authority he must take into consideration the international obligations of the United States. Thus, the amendment would not authorize any indiscriminate breach of international obligations of the United States such as *our most favored nation treaties* with regard to the products of other countries. . . . [*Emphasis added.*]"

The amendment referred to is the Senate amendment to H.R. 11970 which added subsection (c) to section 252 of the Trade Expansion Act of 1962 (19 U.S.C. 1882).

Appellee relies on other legislative history which indicates an intent to provide the President with strong measures to combat foreign trade discrimination. We are of the opinion that the interpretation of section 1882 (c) embodied in Proclamation No. 3564 fully complies with that intent. Under that interpretation, section 1882 (c) provides for the denial of most-favored-nation treatment where the President decides upon that course "having due regard for the international obligations of the United States.". . . The proclamation indicates in the present case that the President did not choose that course because it would have been inconsistent with our international obligations. However, the measures taken under the proclamation were sharply focused on the instrumentality which was maintaining the unreasonable import restrictions – the EEC. Thus the legislative intent to take strong measures against those who maintain unreasonable import restrictions was upheld, and at the same time we did not breach our international obligations.

II. The most-favoured-nation clause in matters relating to treatment of aliens, including inheritance rights, taxation and *cautio judicatum solvi*

Sullivan et al. v. *Kidd*
United States of America : Supreme Court, 3 January 1921
U.S. Reports, *vol. 254, p. 433*
Annual Digest, *1919-1922, Case No. 252*

23. A British subject residing in Canada claimed as devisee a share in the proceeds of Kansas land. Reliance was placed upon the Treaty of 2 March 1899 between Great Britain and the United States, governing the inheritance of real property within the territories of each of the contracting parties by citizens or subjects of the other, and providing for the sale of such property and withdrawal of the proceeds. Citizens or subjects of each of the contracting parties were assured most-favoured-nation treatment in all that concerned the right of disposing "of every kind of property". As to the Dominion of Canada no notice of accession had been

given. The British Government had interpreted the Treaty as giving British subjects wherever resident the right to inherit property in the United States. According to this interpretation, notice of accession as to Canada was necessary only to give effect to the Treaty as to Canadian lands. The United States Government, on the other hand, had interpreted the Treaty as requiring notice as to Canada in order to bring within its operation either property in Canada or British subjects residing therein. The lower Court held the Treaty applicable. On appeal, it was held that the judgement must be reversed. Regarding the most-favoured-nation clause, the Court said:

> That clause has been held in the practice of this country to be one not extending rights acquired by treaties containing it because of reciprocal benefits expressly conferred in conventions with other nations in exchange for rights or privileges given to this Government.

Security for Costs (Treaty of Versailles) Case
Germany: Upper District Court, Frankfurt-on-the-Main, 11 December 1922
Juristische Wochenschrift,[20] 1923, *p. 191*
Annual Digest, 1919-1922, *Case No. 255*

24. This was an appeal by a French plaintiff against an order to deposit security for costs in an action brought by him against a German subject. Section 110 of the German Code of Civil Procedure laid down that aliens appearing as plaintiffs before German courts must at the defendant's request deposit a security for costs. This provision did not apply to aliens whose own State did not demand security for costs from Germans appearing as plaintiffs. A convention concluded at The Hague on 14 November 1896 between a number of States, including Germany and France, exempted the subjects of the contracting parties from the duty to deposit security for costs. This convention was not included in the number of those which, according to article 287 of the Treaty of Versailles, were to be regarded as revived between the Allied Powers and Germany. In article 291 (I) of that Treaty Germany undertook

> to secure to the Allied and Associated Powers, and to the officials and nationals of the said Powers, the enjoyment of all the rights and advantages of any kind which she may have granted to Austria, Hungary, Bulgaria or Turkey, or to the officials and nationals of these States by Treaties, conventions or arrangements concluded before August 1, 1914, so long as those treaties, conventions or arrangements remain in force.

The second paragraph of that article provided that: "The Allied and Associated Powers reserve the right to accept or not the enjoyment of these rights and advantages." There existed between Germany and Bulgaria a treaty providing for the exemption, on the basis of reciprocity, from the duty to deposit security for costs. In a note communicated to Germany in April 1921, the French Government informed the German Government that it wished to avail itself of the relevant provisions of the Treaty between Germany and Bulgaria. The plaintiff did not prove that in France German nationals were exempt from depositing security for costs in actions brought against French nationals.

25. The Upper District Court held that the appeal must be dismissed. Article 291 of the Treaty of Versailles did not oblige Germany to grant to French nationals wider privileges than those granted to the subjects of the former Central Power. The Treaty with Bulgaria was based on reciprocity. As France did not grant such reciprocal treatment, its nationals were not entitled to an exemption from the duty to deposit security for costs.

Dobrin v. *Mallory S.S. Co.* et al.
United States of America: District Court, Eastern District of New York, 2 April 1924
Federal Reporter, *vol. 298*,[21] *p. 389*

26. Thomas Waldron, plaintiff's intestate, was killed on 30 November 1921, while working as a longshoreman on board the steamship *Agwidale*, which at the time was discharging cargo at a pier in the port of Seattle, state of Washington. At the time of this death, Thomas Waldron did not leave either a wife, child, or children, but left a father and mother, alleged to be dependent upon said Thomas Waldron for support, and both of whom, at the time of the decedent's death and at the time of the appointment of plaintiff as administrator, resided in Ireland and not in the United States. The plaintiff claimed that recovery might be had for the benefit of the parents of the decedent, who were residents of Great Britain, because there was in effect at the time of decedent's death a treaty between the United States and Great Britain which contained the "most-favoured-nation" clause, and a treaty of 25 February 1913, having been subsequently made between the United States and Italy, under which Italians could recover, the same right should be accorded to subjects of Great Britain. The Court disagreed with the plaintiff's contention and said:

> The most favored nation clause, article 5 of the Convention . . ., relied on by the plaintiff herein, reads as follows:
>
> "In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the high contracting parties shall in the dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation."
>
> . . .
>
> It is therefore clear that the "most favored nation" clause in that treaty is limited to all that confers the right of disposing of every kind of property real and personal and does not refer to any right to recover for the death of a relative.
>
> In 1908 there was a statute in the state of Pennsylvania similar to the said statute in the state of Washington, and an Italian was killed through negligence, leaving dependent relatives resident in Italy. The court held that under the treaty then existing they could not recover.
>
> Subsequent thereto a supplemental treaty was negotiated between this country and Italy in 1913, . . . which contained the following provisions:
>
> "The citizens' or subjects of each of the high contracting parties shall receive in the states and territories of the other the most constant security and protection for their persons and property and for their rights, including that form of protection

[20] Berlin.

[21] United States of America, *Federal Reporter*, vol. 298 (St. Paul, Minn., West Publishing, 1924).

granted by any state or national law which establishes a civil responsibility for injuries or for death caused by negligence or fault and gives to relatives or heirs of the injured party a right of action, which right shall not be restricted on account of the nationality of said relatives or heirs, and shall enjoy in this respect the same rights and privileges as are or shall be granted to nationals provided that they submit themselves to the conditions imposed on the latter."

This supplemental treaty with Italy did not, under the "most favored nation" clause of the treaty of Great Britain with this country, extend to British subjects the rights conferred by said supplemental treaty on Italian subjects, because, as we have hereinbefore shown, this clause in the treaty was limited by its very words to the right of disposing of every kind of property, real and personal, and did not include any right that might be given by statute to recover in case of the death of a relative, and therefore the statute of the state of Washington is not limited or modified by the treaty existing between this country and Great Britain, and the action should be dismissed.

Zaklady Griotte Lud. Wantoch (Prosecutor) v. *Gerner and O. Henigsberg (defendants)*
Poland: Supreme Court, Third Division, 1 April 1925
Orzecznictwo Sadów Polkich, VI, *No. 465*
Annual Digest, *1925-1926, Case No. 293.*

27. The prosecutors, a Czechoslovak company, had registered trade-marks in Austria in 1912 and in Czechoslovakia in 1922, but had omitted to register the trade-marks in Poland. It now prosecuted the two defendants for infringement of trade-marks. The court at Stanisławów discharged the defendants. The prosecuting firm appealed to the Supreme Court, which held: Under the Paris Convention of 20 May 1883, citizens of the contracting States enjoyed protection for their trade-marks only on condition of registering them in the State concerned. The provisions of the Treaty of St. Germain-en-Laye (Art. 274) could have no application to the present case, which arose before that Tretay entered into force in Poland. The position of Czechosovak citizens on Polish territory could therefore, in this respect, be judged only by the municipal law in force in Poland and by the Paris Convention of 1883. Since Polish law did not protect the trade-marks of Polish citizens before registration of such trade-marks, it was not to be presumed to offer protection to foreigners before such registration. It assured to foreigners in this respect only the same protection as to Polish citizens and even the possible granting of the benefits of the most-favoured-nation clause could not be interpreted as affording to foreigners more extensive rights than those enjoyed by Polish citizens.

Betsou v. *Volzenlogel*
France: Civil Tribunal of the Seine, 23 December 1927
Court of Appeal of Paris (First Chamber), 24 December 1928
Clunet,[22] *vol. 55 (1928), p. 999*; ibid., *vol. 56 (1929), p. 1269*
Annual Digest, 1927-1928, *Case No. 313*

28. The brothers Betsou, Greek subjects, in 1917 leased certain premises in Paris for commercial use. The lease expired in 1926. The lessors refused to renew the lease, whereupon the plaintiffs claimed 200,000 francs as damages for eviction. Their claim was based on the provisions of the Law of 30 June 1926, which granted certain privileges to those engaged in business activities. In support of their claim to the privileges of this Law in spite of their foreign nationality, they cited the Franco-Greek Convention of 8 September 1926, and through the operation of the most-favoured-nation clause, the Franco-Danish Convention of 9 February 1910, Denmark being in this regard the most-favoured nation. Article 19 of the Law of 1926 provided that aliens should be entitled to its privileges only subject to reciprocity.

29. The Civil Tribunal of the Seine held for the plaintiffs and said that through the operation of the most-favoured-nation clause, Greek subjects in France enjoyed the same privileges in commerce and industry as Danish subjects. The Franco-Danish Convention stipulated that in the exercise of their commercial activities Danes enjoyed all the privileges granted to French nationals by subsequent legislation. The Law of 30 June 1926 undoubtedly confers privileges upon those engaged in commerce. Although the terms of article 19 of the Convention required reciprocity in legislation as an absolute and imperative rule, and although there was no legislation on commercial property in Denmark, the French law should be interpreted in accordance with the Franco-Danish Convention. Danish subjects could not be deprived of their rights and privileges by subsequent French legislation. "A convention between nations, as a contract between private persons, is a reciprocal engagement which should be observed by both parties so long as the treaty is not denounced or replaced by a new treaty which restricts the effects of the original contract."

30. The Court of Appeal of Paris, reversing the decision of the Tribunal of the Seine, said that the brothers Betsou could not claim a right to the renewal of their lease. The law of 1926 clearly showed that it construed the right of commercial property as *un droit civil stricto sensu*, that is to say, as a right subject to the provision of article II of the Civil Code which made the enjoyment of rights by foreigners dependent upon the reciprocal treatment of French subjects abroad. In the Franco-Danish Treaty it had been carefully stated that the nationals of the two States would only enjoy the rights and privileges stipulated in so far as those rights and privileges were compatible with the existing legislation of the two States, and Danish legislation did not recognize the rights of foreigners to hold commercial property in Denmark.

Trossy v. *Dumortier*
Belgium: Brussels Civil Court (Chamber of Rent Restriction Appeals), 31 May 1928
Belgique judiciaire, *1929*,[23] *columns 60-61*; Clunet, *vol. 56 (1929), p. 203*
Annual Digest, 1927-1928, *Case No. 312*

31. The special legislation of Belgium regulating the duration of tenancies rendered nationals of countries

[22] *Journal du droit international* (Paris). Referred to hereafter as *Clunet*.

[23] *La Belgique judiciaire: Gazette des tribunaux belges et étrangers* (Brussels), 87th year No. 2 (15 January 1929).

which were either neutral or allied to Belgium during the First World War eligible to share in its benefits, on condition of reciprocal treatment. The claimant complained that the privilege of the legal extension of her tenancy had been denied her because of her French nationality and of the lack of reciprocal treatment of Belgian nationals in France. The Court held for the claimant. Pursuant to the Franco-Belgian Convention of 6 October 1927, the nationals of each of the High Contracting Parties "shall enjoy the territory of each other most-favoured-nation treatment in all questions of residence and establishment, as also in the carrying on of trade, industry and the professions" (article 1). This privilege was extended to cover the possession, acquisition and leasing of real or personal property (article 2). The Treaty concluded between Belgium and Italy on 11 December 1882 provided (article 3) that the nationals of each of the High Contracting Parties should enjoy within each other's territory full civil rights on an equal footing.

It follows, then, that by virtue of the most-favoured-nation clause, French nationals in Belgium are completely assimilate to Belgian nationals for the purposes of their civil rights, and consequently share in the legislation regulating rents. It is immaterial whether these treaties precede or succeed the legislation in question ....

The Franco-Belgian Treaty of 6 October, 1927, was concluded by the Belgian Government in the hope of securing of its nationals in France the benefit of all legislation affecting tenancies and commercial property, in order that the nationals of each country should be treated on an equal footing ....

The claimant, as a French national, is therefore entitled to claim a legal extension of her tenancy of the premises by virtue of the Treaty of 6 Octobcr, 1927.

Valorisation in Germany Case
Germany: Reichsgericht (Supreme Court of the German Reich), 6 June 1928
Annual Digest, 1927-1928, *Case No. 230*

32. The appellant, an Italian subject, was the assignee of a Swiss bank, which, in January 1920, deposited with the defendant, a German bank, two million paper marks for a period of three months, renewable for further periods of three months. The deposit was renewed until August 1923 when it became worthless. According to section 66 of the German Valorisation Law, these monies were not subject to valorisation. It was contended on behalf of the appellant that section 66 could not be applied to an alien as, according to international law, which by virtue of article 4 of the Constitution formed part of German law, it was impossible to deny the benefits of valorisation to an alien. It was also contended that that article was contrary to the German-Italian Treaty of Commerce of 31 October 1925, which provided that the subjects of the contracting parties shall, when in the territory of the other contracting party, have full liberty to acquire and own property to the extent to which such right is enjoyed by the subjects of any other State. This Article, it was argued, constituted a most-favoured-nation clause, and the appellant claimed the benefit of the Treaty of Commerce between the United States and Germany of 1925, which laid down that the subjects of the contracting parties should enjoy the protection of the rules of international law, and that they shall not be deprived of their property without due process of law and adequate compensation.

33. The appeal was rejected. The Court said that there was no rule of international law which gave to aliens the right to demand repayment of their loans in gold. Section 66 could not therefore be regarded as contrary to international law. The most-favoured-nation clause was not relevant in that case. Section 66 could not be regarded as constituting expropriation. The plaintiff had renewed the deposit from time to time, and he had to bear the consequences of the ensuing depreciation. He could not complain if the law, in section 66, refused to him certain advantages which it conferred upon creditors in other cases.

Hawaiian Trust Co. v. *Smith*
United States of America: Supreme Court of the Territory of Hawaii, 18 December 1929
Annual Digest, 1929-1930, *Case No. 251*

34. A Canadian citizen died in Hawaii leaving a will which gave both real and personal property in Hawaii to non-resident British citizens. The inheritance tax statute of Hawaii prescribed a higher rate of taxation on property passing to aliens, non-residents than on property passing to residents or citizens. It was contended that under the Treaty of 2 March 1899 between Great Britain and the United States, the inheritance could not be taxed at a rate higher than that imposed on property passing to residents citizens.[24] The provisions of this Treaty had been made applicable to Hawaii. Article V of the Treaty of 25 November 1850 between Switzerland and the United States of America contained the following provision:

The citizens of each one of the contracting parties shall have power to dispose of their personal property within the jurisdiction of the other, by sale, testament, donation, or in any other manner; and their heirs, whether by testament or *ab intestato*, or their successors, being citizens of the other party, shall succeed to the said property, or inherit it, and they may take possession thereof, either by themselves of by others acting for them; they may dispose of the same as they may think proper, paying no other charges than those to which the inhabitants of the country wherein the said property is situated shall be liable to pay in a similar case. Similar treaties were in force between the United States and Italy, Brazil and Spain respectively.

35. The Court held that the inheritance could not be taxed at a rate higher than that imposed on property to resident citizens. Since the statute imposed a higher tax on property passing to non-resident citizens, as well as on property passing to non-resident aliens, there was no denial of equal protection within the meaning of constitutional guarantees. Nor was there a discrimination against British citizens contrary to the Treaty. The Court said:

[24] Article V of the Treaty of 2 March 1899 reads as follows: "In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most-favoured-nation."

We are unable to conclude that when non-resident American citizens are taxed at a certain rate it was intended by the treaty to stipulate that non-resident British citizens should be taxed at a lower rate. The expression "in like cases" found in both Article I and Article II [of the Treaty of 2 March 1899 between Great Britain and the United States] refers to cases that are alike in all their circumstances and not simply in some of them. It refers undoubtedly... to similarity of circumstances with reference to degrees of relationship and with reference to the amounts of principal to be taxed, but it refers also to the facts of residence and non-residence when those facts are made by the statute a reason or basis for classification and discrimination .... The language of the most favoured nation clause was certainly intended to have some meaning and some application. .. Looking solely to Article II of the treaty with Great Britain and to Article I, if that applies to real estate in all cases, the provision is merely as above held that a British citizen non-resident in Hawaii shall not be taxed more than an American citizen non-resident in Hawaii is taxed . . .

Comptoir Tchécoslovaque and Liebken v. *New Callao Gold Mining Co.*
France: Commercial Tribunal of the Seine, 4 March 1930
Annual Digest, 1929-1930, *Case No. 234*

36. The defendant, an English company, claimed to be exempt from the rule requiring security for costs *(cautio judicatum solvi)* from a plaintiff domiciled abroad. By the Anglo-French Commercial Treaty of 28 February 1882 British subjects in France were accorded most-favoured-nation treatment. "Interpretative declarations" by the Minister for Foreign Affairs, published in the *Journal officiel* in July and August 1929, explained that the most-favoured-nation clause gave British subjects the right to avail themselves of French treaties which assimilated the status of foreigners to that of French nationals. The Court held that the interpretative declarations must be read with and as part of the text of the Treaty, and were binding on the courts. Accordingly, British subjects could avail themselves of the Franco-Swiss Convention of 15 June 1869, which permitted Swiss subjects to sue in France without being required to give security for costs.

Lloyds Banks v. *de Ricqlès and de Gaillard*
France: Commercial Tribunal of the Seine, 4 November 1930
Clunet, *vol. 58 (1931), p. 1018*; Sirey, 1931 [25] *Part II, p. 97*
Annual Digest, 1929-1930, *Case No. 252*

37. Lloyds Bank, on bringing an action against the defendants, had been called upon to furnish security for costs, being a foreign company. The Bank invoked article 1 of the Anglo-French Convention of 28 February 1882 which gave to the subjects of each contracting party most-favoured-nation treatment in the territory of the other. For this purpose, the Bank relied on the provisions of the Franco-Swiss Treaty of 15 June 1869, which gave Swiss subjects the right to sue in France without being required to give security for costs. The Tribunal held that this contention must be rejected. It said:

Whereas the most-favoured-nation clause does not exempt the nationals of contracting states from furnishing security for costs where the treaty containing this clause has a particular purpose and does not regulate all the [civil rights of the respective nationals of those States];

Whereas there is no doubt that the Anglo-French Convention of 28 February 1882, on which Lloyds Bank Limited relies, is a convention with a particular purpose in that it is directed solely to the regulation of commercial and maritime relations between the two countries;

Whereas the plaintiff cannot cite any diplomatic treaty concluded between Great Britain and France which expressly provides for exemption from the provision of security for costs, or which is directed either to questions of procedure or to civil rights as a whole and embodies the most-favoured-nation clause in that context;

Whereas Lloyds Bank Limited would further rely, to no purpose, on an interpretation of the Anglo-French Convention of 28 February 1882 given in letters exchanged during May 1929 between the Ambassador of Great Britain in Paris and the Minister for Foreign Affairs and between the Minister and the Garde des sceaux, published in the *Journal officiel* of 20 July and 13 August 1929;

Whereas, in fact, the interpretation in question merely shows that the most-favoured-nation clause in the said Convention of 28 February 1882 must extend to the laws governing relations between lessors and lessees in England and France;

Whereas, therefore, this interpretation is limited to a particular point of law which is entirely irrelevant to the question of security for costs and it cannot therefore be inferred that it also exempts British subjects who bring suit in France from the provision of such security;

Whereas, furthermore, the interpretation described above presumes the existence of reciprocity;

Whereas, furthermore, under the terms of article 11 of the Civil Code, an alien enjoys in France the same civil rights as are granted to French nationals by treaties of the State of which the alien is a national;

Whereas it has been established that French plaintiffs before English courts are not exempt from furnishing security for costs in respect of cases which they submit for their judgement;

Whereas, in consequence, British subjects have no claim to the enjoyment of a corresponding exemption before French courts, the application for security for costs must be upheld;"

Lukich v. *The Department of Labor and Industries*
United States of America: Supreme Court of Washington, Department One, 22 January 1934
Annual Digest, 1933-1934, *Case No. 200*

38. This was an appeal from the judgement of an inferior Court declaring void an order of the Department of Labor and Industries of the State of Washington on the ground that it was in conflict with the "most-favoured-nation" clause of a Convention of Commerce and Navigation between the United States of America and Serbia of 27 December 1882. The respondent, a citizen and resident of Yugoslavia, claimed full workmen's compensation for the death of her husband in an industrial accident in the State of Washington. The appellant, pursuant to a law of the State, had allowed only 50 per cent of normal compensation where the beneficiary was an alien not resident in the United States. The law (Rem. Rev. Stat. § 7684) provided that, "except as otherwise provided by treaty", a non-resident alien was entitled to only 50 per cent of the normal compensation.

[25] *Recueil général des lois et des arrêts fondé par J.-B. Sirey, 1931* (Paris). Referred to hereafter as *Sirey*.

The respondent relied on later treaties concluded by the United States with other States under the terms of which the full benefit without diminution would be received by nationals of those States occupying the position of the respondent.

39. The Court held that the judgement appealed from must be reversed. The "most-favoured-nation" clause in the instant Treaty of Commerce and Navigation was "limited to such matters as are the subject matter of the particular treaty in which the clause is contained", and its scope was not enlarged by clauses contained in treaties of friendship, commerce and consular rights between the United States and other nations which allowed the right of complete compensation. The Court said:

Considering this clause in connection with the immediate context and the entire treaty now under consideration, we are clearly of the opinion that the treaty refers only to matters of navigation and commerce, trade and industry, and that the favored-nation clause cannot be held to bring into the field of operations, and entitle respondent to the benefit of, treaties of a general nature with other nations which manifestly concern matters not within the purview of the high contracting parties in making the treaty under which respondent claims... The treaty manifestly refers to "commerce and navigation". Its scope is limited to matters in connection therewith. True, the word "industry" is used, but in the context it clearly appears that this word was employed in connection with commerce and not with labor. Under these circumstances, the "most-favored-nation" provision of the treaty, while drawing within its purview all matters contained in latter treaties germane to the matter of commerce and navigation, does not render Rem. Rev. Stat. § 7684, inapplicable to respondent's claim under the workmen's compensation act.

D'Oldenbourg v. *Serebriakoff*

France: Court of Appeal of Paris, 8 June 1935

Gazette des tribunaux, *21-23 July 1935*

Recueil général... 1935,[26] *part III, p. 85*

Annual Digest, 1935-1937, *Case No. 221.*

40. Alexander Serebriakoff, a Russian subject, brought an action against d'Oldenbourg, also a Russian subject, alleging the nullity of a will under which she was a beneficiary. D'Oldenbourg applied for security for costs. This was refused by a judgement of the Civil Tribunal of the Seine of 12 November 1931, on the ground that both parties were of Russian nationality. On 4 May 1932 d'Oldenbourg became a French subject by naturalization. She then obtained an *ex parte* decision from the Court of Appeal of Paris ordering Serebriakoff to furnish 100,000 francs security. Against this *ex parte* decision Serebriakoff appealed, claiming: (1) that d'Oldenbourg was not entitled to security for costs seeing that when the proceedings started she was a Russian subject; (2) that he was exempt from furnishing security by the terms of the Franco-Russian Agreement of 11 January 1934. The Court held that the appeal must be dismissed. The Court said:

Whereas it is of little consequence that, at the time when she was summoned and when she made the application, d'Oldenbourg was of foreign nationality;

Whereas, in principle, a writ of summons establishes the subject of the action, and in particular the merits, but does not establish the status of the parties; and whereas, having become a French citizen in the course of the appeal proceedings, d'Oldenbourg is entitled immediately to invoke the prerogatives or remedies vested in that status, and consequently to apply for security for costs in the case at issue;

Whereas the Decree of 23 January 1934 ordering the provisional application of the Trade Agreement concluded on 11 January 1934 between France and the USSR... is not applicable in the current case; and Alexander Serebriakoff is not entitled to claim the benefit of that Agreement; and, while the Agreement does provide, on the basis of reciprocity, free and unrestricted access by Russian subjects to French courts, the privilege thus granted to such subjects is limited strictly to merchants and industrialists; and this conclusion results inevitably from both the Agreement as a whole and from the separate consideration of each of its provisions; and the Agreement in question is entitled "Trade Agreement"; and the various articles of which it is composed confirm that description, and its article 9, on which Serebriakoff specifically relies, in determining the beneficiaries of the provisions in question, begins with the words: "Save in so far as may be otherwise provided subsequently, French merchants and manufacturers, being natural or legal persons under French law, shall be not less favourably treated... than nationals of the most-favoured-nation...".

Société Poulin v. *Utilities Improvements Co.*

France: Court of Appeal at Amiens, 4 November 1937

Gazette du Palais,[27] *17 December 1937, part I*

Nouvelle Revue du droit international privé,[28] *4th year, vol. IV (1937), pp. 761-763*

Annual Digest, 1935-1937, *Case No. 220*

41. The Tribunal Civil at Compiègne had rejected the claim of the appellant, the French Company Poulin that the British Utilities Improvements Co., the original plaintiffs, should be ordered to furnish security for costs in accordance with the relevant article 16 of the Civil Code and 166 of the Code of Civil Procedure. Both these articles laid down that the provisions contained therein may be modified by treaties between France and other nations. Article 11 of the French Civil Code provides that aliens shall enjoy in France the same civil rights as are enjoyed by Frenchmen in the country of the alien in question. The Court held that the appeal must be allowed. The Court said:

Whereas it is established that United Kingdom legislation does not exempt either French nationals, or indeed in certain cases British citizens, from furnishing security for cots; and whereas the application of article 11 of the Civil Code cannot have the effect of extending the benefit of such exemption to British citizens bringing actions in France;

Whereas it is universally recognized that the provisions of article 16 of the Civil Code and article 166 of the Code of Civil Procedure may be modified by the clauses of treaties concluded between France and foreign States; whereas, however, in order for the express provisions of the law to be set aside, it is necessary that an agreement concluded between the States concerned should so decide expressly and in unequivocal language;

[26] *Recueil général périodique et critique des décisions, conventions et lois relatives au droit international public et privé: année 1935* (Paris).

[27] Paris.

[28] Paris.

Whereas relations between France and Great Britain are governed by the Convention of 28 February 1882, which reserved to nationals of each of the High Contracting Parties the favours, immunities or privileges which might be conceded by them to nationals of a third Power with regard to certain aspects of commerce, industry and shipping; and whereas, in an exchange of letters of 21 and 25 May 1929 between the Ambassador of Great Britain and the French Minister for Foreign Affairs, whose provisions, having been approved by decree, must be considered as incorporated in the Convention, it was stated that under the most-favoured-nation clause, which is the basis of the said Convention, British citizens may, subject to reciprocity, be assimilated to French citizens in respect of the legislation concerning leases both for dwellings and for commercial or industrial premises;

Whereas it is true that the aforementioned letters base the decision relating specifically to leases, which is their sole concern, on two broader principles which they also state, namely, that the Anglo-French Convention of 28 February 1882 is not restricted to commercial and maritime matters but also covers establishment, and that the most-favoured-nation clause, which is the basis of that Convention, gives British subjects the right to claim the benefit of French treaties providing for the assimilation of aliens to nationals;

Whereas, however, the clause providing for the assimilation of aliens to nationals, which is held to be equivalent to the most-favoured-nation clause, is not considered, in the practice of the courts or even in legislation, as automatically extending to aliens who benefit from it in France the totality of private rights *stricto sensu*; and whereas the act of 30 June 1926, which requires reciprocity of legislation concerning aliens, is interpreted in practice as excluding from its benefits foreign lessees, who may invoke only the most-favoured-nation clause;

Whereas the Convention of 28 February 1882, and the letters which extended its application, contain an express provision concerning reciprocity; and whereas it is improbable that the High Contracting Parties would have intended, without clearly stating their purpose, to impugn the principle set forth in article 11 of the Civil Code by a tacit reference to a category of rights in respect of which reciprocity is impossible;

Whereas, if the instruments mentioned above exempted British subjects from furnishing security for costs in all types of proceedings, it would be difficult to understand why a subsequent Convention of 18 January 1934 should have provided for such exemption only in the case of actions for registration and exequatur;

Whereas, consequently, the existence of a diplomatic agreement which would limit the application of the rules of French law with regard to security for costs cannot be presumed from the general but imprecise terms of the letters of 21 and 25 May 1929;

Magnani v. *Hartnett*

United States of America: Supreme Court of New York, Special Term, Albany County, Supreme Court of New York, Appellate Division; 14 December 1938 and 11 July 1939

New York Supplement, Second Series, *vol. 8, p. 448; vol. 14, p. 107*

Annual Digest, 1938-1940, *Case No. 123*

42. This was a motion for an order directing the Commissioner of Motor Vehicles of the State of New York to revoke a chauffeur's licence issued to one Matthews, a British subject, in accordance with Section 20 Vehicle and Traffic Law, which provided that chauffeurs' licences shall not be issued to aliens, except those who have made declaration of intention to become citizens of the United States. The motion was attacked on the ground that the New York statute was unconstitutional as being in violation of the Treaty of 3 July 1815 between the United States and Great Britain providing for "a reciprocal liberty of commerce". The Supreme Court (Special Term) held that the motion must be granted. On appeal, the Supreme Court, Appellate Division held that the order must be reversed. The Court said:

In view of the unqualified prohibition of the statute in question against alien chauffeurs it is quite obvious that it conflicts with the terms of the Treaties of 1794 and 1815 between the United States and Great Britain and is therefore unconstitutional and void ... The language used in the 1794 treaty that "settlers and traders ... shall continue to enjoy, unmolested, all their property of every kind" is not to receive a narrow construction. The protection intended to be afforded by the quoted words comprehends vastly more than property ownership. It ensures to a subject of Great Britain the right to engage in commerce, trade, business, or labor on the same terms as our own citizens. The promise contained in the covenant to enjoy property rights carries with it, by necessary implication, the right to every incident essential to the full enjoyment of such property. The enjoyment of such benefits surely is not restricted, as contended by petitioner, to limited areas, namely, within the jurisdiction of posts as that term is used in the treaty. This contention finds no support in the terms of the treaty. It will be noted that Article II which secures the right in question refers to "posts and places within the boundary lines assigned by the treaty of peace to the United States", and then again in speaking of British subjects refers to all those who "reside within the said boundary lines".

The provisions of the Treaty of 1794 are very full and comprehensive, and were intended to cover not only the conditions and problems which existed at the time of its signing but also to meet circumstances and contingencies which were to arise in the future.

...

It is equally clear that the provisions of the Treaty of 1794 were intended to embrace all the ordinary occupations and trades.

43. Passing to article I of the Treaty of 1815 which provided that "Generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce", the Court said:

Here again the word "commerce" should be given the broadest meaning consistent with the purposes and aims sought to be attained by the treaty. The rules of interpretation invoked in construing the language of the Treaty of 1794 apply with like effect to the provisions in the later treaty. The broader meaning of the term "commerce" embraces the gainful occupation of driving a motor vehicle for hire. This is particularly true where one intends to operate his motor vehicle under circumstances requiring a licence as a chauffeur.

Under the "most favored nation" doctrine which prevails in our relations with Great Britain, these treaties and the nationals thereunder are entitled to as free a scope in commercial activity as the nations of China, Japan, and Germany, under later and more exclusive treaties. The effect of the order is to deny to the subjects of Great Britain the same freedom in commercial activities which we accord to the nationals of China, Japan and Germany. No such distinction should be made and none is warranted by the language of the respective treaties.

The treaties with Great Britain are the supreme law of the land and supersede all local laws inconsistent with their terms ...

Lesec v. *Luykfasseel*

Belgium: Court of Appeal of Brussels, 1 May 1940

Pasicrisie Belge, 1941, [29] *part II, p. 62.*

Annual Digest, 1919-1942 (Supplementary volume), *Case No. 4*

44. A Belgian law of 24 July 1939 prohibited, *inter alia*, the levying of execution against persons who had been called to the colours in accordance with the special provision of article 53 of the Law concerning the Militia. According to article 3 of the Law of 24 July 1939, the benefit of its provisions was to be enjoyed by Belgian citizens only. The appellant, a French subject, who had been called up for military service by the French Army, was adjudged bankrupt by a judgement of the Tribunal de Commerce of Brussels, dated 7 October 1939. He contended that he was entitled to the benefit of the Franco-Belgian Treaty on Residence concluded on 6 October 1927, which granted most-favoured-nation treatment to the national of one party when residing in the territory of the other. The Court held that the appeal must be rejected. The appellant was not entitled to the benefits of the Law of 24 July 1939. The Court said:

This Article 53 [of the law concerning the Militia], like all other rules of the law concerning the Militia (Royal Decree of February 15, 1937) applies only to Belgian citizens. Consequently a French national cannot invoke the benefit of Article 3 of the Law of July 24, 1939. However, the appellant alleges thas this law applies to him in virtue of the Convention concerning Residence concluded between Belgium and France on October 6, 1927. Article I of this Convention provides that the nationals of each of the contracting parties shall enjoy in the territory of the other contracting party the benefit of most-favoured-nation treatment in respect of residence and establishment as well as in respect of the exercise of commerce, industry or professional activities. The judgement of the court of first instance . . . admits that Switzerland enjoys the most favourable treatment and that on June 4, 1887, a Treaty of Establishment was concluded between Belgium and Switzerland which provided that Swiss citizens in Belgium shall enjoy the same rights as Belgians as regards their person and their property. The respondent and the court of first instance point out with full justification that the Convention concerning Residence of October 6, 1927, should have been approved by both Chambers, but that this was not done. However, Article 68 (2) of the Constitution provides that treaties which may affect Belgian nationals individually are only operative if the assent of both Chambers has been obtained . . .

The Convention concerning Residence of October 6, 1927, in combination with the Swiss-Belgian Treaty concerning Residence of June 1, 1887, grants in Belgium the same treatment to Belgian and French subjects as regards their sojourn, establishment, exercise of commerce, industry and professional activities. This concession in virtue of which French nationals obtain rights which they did not enjoy before, imposes upon Belgians a wide field of corresponding obligations. . . . as a result of this treaty French nationals are granted the benefit of every measure which may, in the future, be conceded to Belgians in Belgium . . . It follows that the Treaty of October 6, 1927, in consequence of which the exercise and the enjoyment of the rights of Belgian citizens can be modified, required the approval of the two Chambers. This approval was not obtained, neither in the form of a previous delegation nor in the form of ratification . . . Finally, even if it should have to be admitted that the Convention of 1927 applies, either on the ground that it did not require the approval of the two Chambers or on the ground that the Chambers have ratified it implicitly, it would not follow that the appellant can invoke the benefit of Article 3 of the Law of July 24, 1939, . . . this provision only grants relief to Belgians who have been called to the colours . . .

Cie. Internationale des Wagons-Lits v. *Société des Hôtels Réunis*

France: Court of Appeal of Paris, 29 October 1940

Gazette du Palais, *7 November 1940*

Annual Digest, 1919-1942 (Supplementary volume), *Case No. 131*

45. Article 2 of the Franco-Belgian Convention of 6 October 1927 provided as follows:

The nationals of each of the Contracting Parties shall enjoy, in the territory of the other, most-favoured-nation treatment in all matters concerning the possession, occupation and letting of all property movable or immovable.

By the terms of the Exchange of Letters which took place from 16 to 24 April 1934 the two Governments gave this provision an extensive interpretation, from which it resulted that Belgian subjects in France could invoke unrestrictedly the benefit of various French laws of 1926-1930 and 1933, concerning letting of houses and business or industrial premises. At the outbreak of hostilities the French Government promulgated a decree dated 26 September 1939, concerning the reduction of rents. By article 25 of this Decree, the only foreigners allowed to claim the benefit of this law were the subjects of protected countries or of territories under French mandate, foreigners serving in French or Allied military formations, their issue or their spouses.

46. On the basis of this Law the Belgian Compagnie internationale des wagons-lits et des grands express européens, which occupied premises in Paris belonging to the French Société des hôtels réunis, claimed a reduction of its annual rent. By a judgement of 16 January 1940, the President of the Tribunal Civil de la Seine dismissed the claim, holding that the 1939 Decree did not apply to the Compagnie internationale des wagons-lits. The Company appealed. The Court held that the judgement of the Court below must be confirmed:

The Contracting Parties of the Franco-Belgian Agreement of 1927 and the interpretative Conventions . . . of 1934 having neither foreseen nor provided against a state of war, it is clear that they did not intend to include among the concessions to Belgian subjects the benefits of exceptional measures which the needs of defence permit a nation at war to reserve solely to its own nationals or to a certain category of foreigners restrictively enumerated.

Application of the Treaty of Commerce between Finland and Sweden

Finland: Supreme Court of Administration, 24 March 1943 [30]

47. The Finnish-Swedish Commerce Treaty provided that neither Party should impose duties or other revenues other than those imposed on its own nationals on the nationals of the other Party. A licence for establishing

[29] *Pasicrisie belge: Recueil général de la jurisprudence des cours et tribunaux en Belgique—année 1941.*

[30] Information received from the Government of Finland. No further information regarding this case is available.

a firm in Finland was granted to a Swedish national by a Provincial Board, which fixed a stamp duty on the licence. The amount exceeding the stamp duty to be collected from a Finnish national in a similar case was ordered by the Court to be returned to the Swedish national on the basis of the most-favoured-nation clause contained in the Finnish-Swedish Commerce Treaty.

In re the Turkish Inspector of Students

Switzerland: Zürich Tax Appeals Commission, 12 September 1945

Annual Digest, 1946, *Case No. 80*

48. A Turkish national, employed by his Government as inspector of Turkish students in Switzerland and issued with an official passport, contested his liability to taxation in the Canton of Zürich. Upon his further appeal the Court held that the appeal must fail. The fact that the appellant had a diplomatic passport could not alter the circumstance that in Switzerland he was a private person. The appellant is unable to rely upon any convention for the avoidance of double taxation. For no such convention has been concluded between Switzerland and Turkey. The Double Taxation Treaty of 15 July 1931 between Switzerland and Germany could apply to the appellant—who possessed neither Swiss nor German nationality—only if there were therein a special stipulation excluding double taxation of persons in his position; the most-favoured-nation clause in article I (2) and article 7 of the Treaty of Friendship and Commerce between Switzerland and Turkey of 13 December 1930 excluded the invocation of the Treaty between Switzerland and Germany or any other double taxation treaty. For double taxation agreements apply solely between the parties thereto for the reason that their exclusive aim the delimitation of the jurisdiction of such States in the matter of taxation *inter se*.

National Provincial Bank v. *Dollfus*

France: Court of Appeal of Paris, 9 July 1947

Sirey, 1948, *part II, p. 49*

Annual Digest, 1947, *Case No. 79*

49. Dollfus, the respondent, had brought an action against the National Provincial Bank on a contract concluded in Britain. The Bank pleaded to the jurisdiction of the Court. The Tribunal de Commerce de la Seine held that it had jurisdiction by virtue of article 14 of the Civil Code, which provided that "aliens who are not resident in France may be summoned before French Courts for obligations contracted abroad towards a French national". The National Provincial Bank appealed. It was contended on its behalf that article 14 did not apply to British subjects, as these enjoyed most-favoured-nation treatment in France. The Court held that the appeal must be allowed. With regard to the first ground of appeal, the Court held that the most-favoured-nation clause applied only to the subject-matter of the treaty in which it was contained, and that the Franco-British Convention of 1882 did not apply to matters of jurisdiction and procedure. The Court said:

The Anglo-French Treaty of June 28, 1882, provides that British nationals shall enjoy most-favoured-nation treatment in France. The National Provincial Bank invokes that Convention together with the Franco-Belgian Treaty of July 8, 1899. The latter provides that French subjects in Belgium and Belgian subjects in France shall in civil and commercial matters be governed by the same rules of jurisdiction as nationals. The appellant endeavours to prove that Article 14 of the Civil Code does not apply to British subjects as a result of these two Conventions; and that the Tribunal de Commerce de la Seine has no jurisdiction in the case. But a most-favoured-nation clause can only be invoked if the subject matter of the treaty containing it is identical with that of the particularly favourable treaty the benefit of which is claimed. In the Franco-British Convention of 1882 the most-favoured-nation clause is not made applicable in any general manner, but only in regard to the special matters enumerated therein. That enumeration neither expressly nor impliedly includes matters of jurisdiction and procedure. It is true that on May 21 and 29, 1929, further Franco-British agreements were concluded upon which the National Provincial Bank relies. But these new agreements, like the Decree of June 16, 1933, as interpreted by the report to the President of the Republic which accompanied that text, aimed solely at giving British subjects in France and French subjects in Great Britain the benefit of the laws on leases. Their effect was strictly limited to that object. As the Franco-British Convention of 1882 did not deal with questions or jurisdiction and procedure, it cannot permit a British subject, by the application of a most-favoured-nation clause, to claim the benefit of a Treaty between France and a third country relating to these matters.

Verbrigghe v. *Bellest*

France, Court of Cassation (Chambre Sociale), 11 July 1947

Dalloz hebdomadaire,[31] 1947, *"Jurisprudence", p. 396*
Annual Digest, 1947, *Case No. 76*

50. This was an appeal against a decision of the Commission Paritaire d'Arrondissement de Louviers of 19 July 1946, which had held that the benefits of the Ordinance on farm-leases did not apply in the case of the appellant, a Belgian subject, lessee of a farm in France, who had asked for a renewal of the lease under the terms of that Ordinance. The Commission Paritaire held that according to the Ordinance its benefits could only be invoked by aliens whose children had acquired French nationality. The appellant contended that he was entitled to the benefits of the Ordinance in virtue of article 2 of the Franco-Belgian Convention concerning Conditions of Residence of 6 October 1927, as supplemented by an interpretative agreement of 16 and 24 April 1934, based upon an exchange of diplomatic notes. Article 2 of the Convention provided:

> The nationals of each of the Contracting Parties shall enjoy most-favoured-nation treatment in the territory of the other as regards the possession, acquisition, occupation and leasing of any movable or immovable property.

The Belgian note of 11 April 1934 stated:

Belgian subjects may invoke in France, like French nationals themselves, the benefit of all provisions which apply to owners or tenants in respect of both residential buildings and buildings destined for commercial, industrial or professional uses.

[31] *Recueil Dalloz de doctrine, de jurisprudence et de législation* (Paris), year 1947. Referred to hereafter as *Dalloz hebdomadaire.*

The appellant also invoked the Law of 28 May 1943 on the application to aliens of the laws on leases, which assimilated aliens who were protected by a diplomatic convention to Frenchmen in that matter, all restrictive provisions contained in legislation relating to leases notwithstanding. The Court held that the judgement of the lower Court must be quashed. The Court said:

Article 61 of the Ordinance of October 17, 1945, as amended by the law of April 13, 1946, which refuses the benefits of that Ordinance to cultivators of foreign nationality if they do not fulfil certain conditions, does not affect aliens who can invoke an international Convention exempting them from these conditions. This is done, in relation to farm-leases, by the Franco-Belgian Convention of October 6, 1927, as interpreted by the agreement of April 16 and 24, 1934, which provided that the nationals of each of the contracting parties should enjoy most-favoured-nation treatment in the territory of the other, particularly with regard to the leasing of all movable or immovable property, and that Belgian subjects could invoke in France the benefit of all provisions relating to leases like French nationals themselves. That position was, moreover, confirmed by the law of May 28, 1943.

Mandel v. *Vatan*

France: Tribunal Civil de la Seine, 28 July 1948

Gazette du Palais, 1948 *(2e sem.), p. 162*

Annual Digest, 1948, *Case No. 1*

51. This was an action by one Mandel, a Polish citizen, for the ejectment of the defendant, a French national, from a flat. Mandel had been granted possession of the flat by a decision of the same Court of 17 April 1946, in pursuance of an Ordinance of 14 November 1944, which provided that tenants who had been compelled to leave their place of residence as a result of the war should be entitled to recover possession of it. It was now contended on behalf of the defendant that a law of 7 May 1946 laid down that aliens should not be entitled to eject French nationals from flats of which they had been granted possession by judicial decree until they had found an adequate place of residence for them. On behalf of the plaintiff it was contended that the Franco-Polish Treaty of 1937 entitled him to recover possession, as it granted him most-favoured-nation treatment in the matter of owning and occupying property. The Court held that the defendant must be ejected. A municipal law must be so interpreted as not to conflict with an international Convention. The Court said:

A treaty which has been regularly ratified and published is superior in authority to municipal law... The Law of May 7, 1946, which provides that aliens are not entitled to eject French nationals from flats of which they have been granted possession by judicial decree until they have found an adequate place of residence for them, must, accordingly, be considered to exempt from its provisions aliens who are by treaty exempted from the conditions contained in these provisions. Such is the import of the Franco-Polish Convention of May 22, 1937, promulgated by decree of May 31, 1937. Admittedly the contracting parties could not foresee the circumstances which gave rise to the Ordinance of November 14, 1944, and the Law of May 7, 1946. But the Treaty provides that the nationals of either country shall enjoy in the territory of the other most-favoured-nation treatment in the matter of owning, acquiring and occupying movable or immovable property... Polish nationals must, accordingly, by virtue of the most-favoured-nation clause, enjoy the benefit of such rights. The right of "owning" and "occupying" property necessarily includes that of recovering possession of a place of residence from which one has been unlawfully ejected.

Lovera v. *Rinaldi*

France: Court of Cassation (Plenary Session of all Divisions), 22 June 1949

Dalloz hebdomadaire, 1951, "*Jurisprudence*", *p. 770*

Annual Digest, 1949, *Case No. 130*

52. The appellant, an Italian national, had, on 23 November 1946, submitted a request for the renewal of his lease, in reliance on an Ordinance of 17 October 1945. The Court below rejected his request on the ground that article 61 of that Ordinance, as amended by a Law of 13 April 1946, excluded aliens from the benefits of its provisions. It was now contended on behalf of the appellant that the Franco-Italian Convention of 3 June 1930 provided that Italian nationals should enjoy in France the same treatment as French nationals, or at least as the most-favoured aliens. The Court held that the appeal must be dismissed. The Franco-Italian Treaty lapsed on the outbreak of war between the two countries. The Court said:

Article 61 of the Ordinance of October 17, 1945, does not apply to the case of an alien who can invoke an international Convention exempting him from its restrictive conditions. However, it is necessary that such a Convention should actually be in force. Reciprocal obligations concerning matters of private law assumed in respect of relations in time of peace lapse on the outbreak of war. The state of war between Italy and France was incompatible with the maintenance of the obligations which the Convention of 1930 imposed on the latter with regard to the establishment of Italian nationals on French territory. The armistice suspending hostilities did not end the state of war. At the date when the appellant put forward his request the Treaty had not again been put into effect.

In re X and Mrs. X

France: Conseil d'Etat, 3 February 1950

Revue critique,[32] *vol. 40 (1951), p. 635*

International Law Reports, 1950, *Case No. 99*

53. French legislation of 1944 and 1945 provided for the confiscation of profits derived from commercial relations with the enemy. The petitioners, who were Swiss nationals, contended that they were not subject to this legislation, on the ground that they were nationals of a neutral State and that under a Franco-Swiss Treaty of 1882 they were entitled to "most-favoured-nation" treatment, and thus, by application of a Franco-Spanish and a Franco-British Treaty, to exemption from all war levies. The contentions of the petitioners were rejected. The Conseil d'Etat said:

Whereas the petitioners contend that, by virtue of the treaty concluded on 23 February 1882 between France and Switzerland concerning the establishment of French nationals in Switzerland and Swiss nationals in France, article 6 of which provides that: "Any favour which one of the Contracting Parties has granted, or may grant in future, in whatever form, to another Power, in respect of the establishment of citizens and the exercise of industrial occupations shall be applicable in like manner and at the same time to

[32] *Revue critique de droit international privé* (Paris). Referred to hereafter as *Revue critique*.

the other Party, without it being necessary to conclude a special agreement to that effect", the exemption provided for the benefit of Spanish nationals in article 4, paragraph 2, of the Franco-Spanish Consular Convention of 7 January 1862, and for the benefit of British subjects in article 11 of the Anglo-French Convention of 28 February 1882 in respect of "contributions of war, ... and other contributions leviable under exceptional circumstances", should be granted to Swiss nationals established in France: Considering that the grounds invoked in that plea would necessitate the interpretation of the aforementioned international Conventions, a matter on which it is not for the Conseil d'Etat to rule; and that, in the absence of any special agreement between the Governments concerned, the Minister for Foreign Affairs is alone competent in France to determine the meaning and scope of the provisions in question; and that the interpretation given in the communication dated 6 November 1947 from the Minister for Foreign Affairs to the Minister for Finance provides that Swiss nationals cannot avail themselves of the provisions of the said article 6 of the treaty concerning establishment of 23 February 1882 to claim the exemption provided in favour of Spanish and British nationals and that, therefore, Mr. and Mrs. X are not justified in invoking those grounds to contend that the provisions of the Ordinance of 18 October 1944 and subsequent amendments thereto do not apply to them ....

Jones-Dujardin v. *Tournant and Haussy*

France: Tribunal Civil of Arras, 2 February 1951

Dalloz hebdomadaire, 1951, *"Jurisprudence", p. 360*

International Law Reports, 1951, *Case No. 135*

54. A French Law of 1 September 1948 gave tenants security of tenure. It provided, however, that in certain circumstances, such as personal need, the owner of premises could evict a tenant. The plaintiffs, British nationals, were the owners of a house of which the second defendant was the tenant. They sought to obtain an order for eviction on the ground that they needed the house for their personal use. It was contended on behalf of the defendant that French nationals only were entitled to the exceptional right of evicting a tenant. The Court held that the plaintiffs were entitled to recover possession of the house owned by them. The Court said:

The Anglo-French Convention concerning commercial and maritime relations, of 28 February 1882, contains a most-favoured-nation clause. An Agreement promulgated by Decree dated 16 June 1933, extended the scope of that Convention to leases; ... It is not necessary, in order to enable a British subject to rely on the provisions of the Law on leases of 1 September 1948 and in particular article 19 of that Law, which give special rights to French nationals, that English law should contain analogous provisions, since the Constitution of 1946 affirms the supremacy of treaties over municipal law even if that law is later in date than the treaty.

Asia Trading Co., Limited v. *Biltimex*

Netherlands: District Court of Amsterdam, 17 October 1951

Netherlandse Jurispridentie [Netherlands Juridical Decisions] 1952,[33] *No. 336, pp. 676-677.*

International Law Reports, 1951, *Case No. 134*

55. The Asia Trading Company, of Djakarta, brought an action in the District Court of Amsterdam against the firm of Biltimex, of Amsterdam. The defendant applied for an order that the plaintiff, being a foreign company, should deposit *cautio judicatum solvi.* The plaintiffs opposed the application.

The Court held that the order for the *cautio* must be refused. This followed from Article 24, paragraphs 1 and 2 of the Netherlands-Indonesian Union Statute agreed upon on 2 November 1949, which promised the subjects of each partner to the Union treatment on a footing of substantial equality with the other's own subjects, and in any case most-favoured nation treatment. The latter provision guaranteed to Indonesians exemption from the *cautio judicatum solvi*, because the Netherlands had previously exempted other foreigners and foreign countries from the *cautio* under the Hague Convention on Procedure in Civil Cases of 17 July 1905.

Rex v. *Hans Beckmann*

Norway, Supreme Court, 6 May 1954

International Law Reports, 1954, *p. 307*

56. The accused had accepted employment as a whaler on board a Dutch whaling ship, which took part in the Dutch whaling expedition during the season 1952/53. He was prosecuted for having violated the Whaling Law of 16 June, 1939, forbidding Norwegian citizens, Norwegian companies and persons domiciled in Norway to participate in any way in whaling expeditions under a foreign flag. The accused contended that the Law was in contravention of international law and, in particular, of treaties concluded with the Netherlands. Paragraph 5 (*a*) of the Whaling Law provided as follows:

It is forbidden for Norwegian companies, citizens or domiciled persons directly or indirectly to participate in or co-operate in furthering whaling with floating factories under an alien flag.

The King or whom he authorizes thereto may except from this provision foreigners or foreign companies which engaged in whaling in the last antartic whaling season before September 3, 1939, or a foreign whaling factory which before that date was being used for whaling.

57. His appeal was dismissed. The Court said that it could not.

hold that the legal situation under article 5 (*a*) of the Whaling Law of 16 June 1939 with the supplementary Law of 24 May 1946, contravenes treaties entered into by Norway or principles which Norway has undertaken in international commitments to respect. This is so as regards treaties entered into both before and after the enactment of the Statutes of 1939 and 1946. In particular, the Treaty of Commerce and Navigation entered into with the Netherlands on 20 May 1912 is not incompatible with Norway's right to introduce a regulation such as that contained in article 5 (*a*) of the Whaling Law. Neither article 1 of the Treaty which secures reciprocal most-favoured-nation treatment to the respective citizens, nor article 3 which guarantees "national treatment" in the other country, purports to cover such situations as are regulated by article 5 of the Whaling Law. The defence has particularly stressed that the dispensation in the second paragraph of article 5 (*a*) is a discrimination against the Netherlands in violation of the most-favoured-nation clause in the Treaty of 1912. This argument is without foundation. The provision in question is general in character and puts all countries which did not engage in whaling before 3 September 1939, on the same footing.

[33] Zwolle, IV.V. Uitgeversmaatschappij W. E. J. Tjeenk Willink.

Therefore,

> there is no basis for such a restrictive interpretation of article 5 *(a)* of the Statute as has here been suggested.

Fiscal Exemption Case in Greece

Greece: Conseil d'Etat. 1954

Revue hellénique de droit international,[34] *vol. 8 (1955), p. 301*

International Law Reports, 1954, *p. 305*

58. The Convention concerning Establishment and Judicial Protection concluded between Greece and Switzerland on 1 December 1927 provides in article 9 that

> in no case shall the nationals of either of the Contracting Parties be subjected on the territory of the other Contracting Party to charges, customs duties, taxes, dues or contributions of any nature different from or higher than those which are or will be imposed on subjects of the most-favoured-nation.

Article 11, which relates to commercial, industrial, agricultural and financial companies, duly constituted according to the laws of one of the Contracting Parties and having their siège on its territory, provides that the said companies

> shall enjoy, in every respect, the benefits accorded by the most-favoured-nation clause to similar companies, and, in particular, they shall not be subjected to any fiscal contribution or charge, of whatever kind and however called, different from or higher than those which are or will be levied on companies of the most-favoured nation.

The appellants in this case, a Swiss Company whose head office was situated in Geneva, claimed exemption from income tax, invoking in support of that claim the Anglo-Greek Convention of 1936 for the Reciprocal Exemption from Income Tax on Certain Profits or Gains Arising from an Agency. Under that Convention, the profits or gains arising in Greece to a person resident, or to a body corporate whose business is managed and controlled in the United Kingdom, were exempted from income tax unless they arose from the sale of goods from a stock in Greece or accrued through a branch or management in Greece or through an agency in Greece where the agent had a general authority to negotiate and conclude contracts. The appellants contended that they had no establishments of that kind in Greece, seeing that their representative there did not have the power to enter into contracts in his own name and for his own account; in consequence, the conditions required by the Anglo-Greek Convention being fulfilled, the appellant ought to be exempted from income tax.

59. It was held that the appellant was entitled to fiscal exemption, irrespective of reciprocity. It was said:

> Whereas the original jurisdiction, interpreting the Convention between Greece and Switzerland, recognized that the exemption from income tax of Swiss enterprises in Greece was conditional upon the institution of a corresponding exemption in Switzerland (either directly, or indirectly through the most-favoured-nation clause, by the exemption of the enterprises of any third country) in respect of Greek enterprises operating in Switzerland through an agent, just as the exemption of British enterprises in Greece is conditional upon the exemption in Great Britain of Greek enterprises operating there. Recognizing that no such exemption exists in Switzerland, proof to that effect having been produced, it categorically rejected the corresponding plea of the appeal, having therefore considered that the appellant's contention regarding the limited powers of its representative was irrelevant and should not be examined.
>
> Whereas, in economic treaties in particular, the purpose of the most-favoured-nation clause is to avoid the danger that the subjects of Contracting States might possibly be placed in an unfavourable position compared with subjects of other States in the context of international economic competition. Through the operation of that clause, each of the two contracting States grants to the other the favours which it has already granted to a third State and undertakes to grant it any favour which it may grant to a third State in future, for the duration of the treaty. Provided that there is no stipulation to the contrary in the agreement, such latter favours accrue *ipso jure* to the beneficiary of the clause, which does not have to furnish any additional compensation, even where the concessions granted to the third State are not unilateral but are subject to reciprocity. When interpreted in that sense, the clause achieves the purposes for which it was designed, namely, assimilation in each of the two States, in respect of the matters to which the clauses relates, of the subjects or enterprises of the other State to the subjects or enterprises of a third and favoured country.
>
> Whereas, in the current case, the most-favoured-nation clause embodied in the Convention between Greece and Switzerland is simply stated without restriction or onerous conditions, and as such confers upon Swiss enterprises operating in Greece the right to fiscal exemption under the conditions under which the same exemption is granted to British enterprises, even if Greek enterprises do not enjoy in Switzerland the favour which they enjoy in Great Britain. Consequently, the impugned decision, having made the exemption of the appellant conditional upon the existence in Switzerland, as compensation, of a similar régime in favour of Greek enterprises established there, interpreted the Convention between Greece and Switzerland erroneously and should for that reason be set aside, in accordance with the second and justified plea of the present appeal, and the case should be referred back to the original jurisdiction for consideration of the question whether the appellant is eligible to benefit under the Convention between Greece and Switzerland, and of the soundness of the contention in the appeal that the establishment of the appellant in Greece is not of a kind which under the provisions of the said Convention, precludes fiscal exemption.

Crausaz John case

France: Cour d'appel de Paris, 18 March 1955

Clunet, *vol. 82 (1955), p. 669*

60. The accused pleaded articles 1 and 3 of the Treaty of establishment of 23 February 1882 whereas French nationals in Switzerland and Swiss nationals in France may freely carry on a trade like nationals—and article 6 of the same treaty containing, as regards establishment, the most-favoured-nation clause and consequently the Franco-Saarlander Convention of 3 March 1950. In its judgement the Court said:

> Considering that, although the courts are competent to interpret the clauses of international agreements concerning private law relationships between the parties to proceeding, they are not competent, where there is uncertainty, to determine the sense and the scope of such of those clauses which concern public law, the executive power alone being competent to interpret such clauses.
>
> Considering that the Franco-Swiss Treaty of 23 February 1882 establishes the principle of equal treatment, in each of the two

[34] Athens.

countries concerned, of nationals of the other country, subject to an express obligation for those nationals to comply with the laws and by-laws; and that this latter clause unquestionably relates to public law.

Considering that the Legislative Decree of 12 November 1938, together with the Decree of 2 February 1939 and the other texts cited in the indictment, are laws and by-laws applicable to alien in the exercise of their profession in French territory and that it is for the French Government to determine whether such texts are applicable to Swiss nationals enjoying the benefits of the Convention of 23 February 1882;

Considering, furthemore, that the Treaty of 23 February 1882 is based on the concept of reciprocity of the favours accorded to nationals of either country and that the matter to be determined is whether French nationals established in Switzerland are in effect subject to laws and by-laws in the conduct of their industrial or commercial activities;

Considering, finally, that the question whether article 6 of the Franco-Swiss Treaty of 26 February 1882 has the effect of obliging the French authorities automatically to accord Swiss nationals resident in France the benefits of the provisions in article 8 of the Franco-Saarlander Convention of 3 March 1950, which exempts citizens of the Saar from certain obligations imposed by the Ordinance of 2 November 1945 on aliens in the exercise of various professional activities, is also a matter relating to public law; on those grounds ... suspends judgement.

Lloyds Register of Shipping v. *Bammeville*

France, Tribunal Civil de la Seine, 22 March 1958

Gazette du Palais, 1958, *part I, "Jurisprudence", p. 316*

International Law Reports 1958-II, *p. 599*

61. Upon the expiration of a lease of business premises a tenant was entitled, in accordance with the French Decree of 30 September 1953, to call upon the landlord to renew his lease, or, alternatively, to pay compensation in the event of such renewal being refused. Lloyds Register of Shipping, the plaintiffs herein, who in the present action claimed compensation, failing the renewal of their lease, contended that the Law of 28 May 1943, to which article 38 of the Decree referred, provided that the benefit of security of tenure, or alternatively the right to payment of compensation, was available to citizens of countries which granted similar rights to French citizens and that the United Kingdom was such a country because the Anglo-French Treaty of Commerce and Navigation, 1882, contained a most-favoured-nation clause which had been made applicable to the law of landlord and tenant by a Supplementary Agreement of 21 and 26 May 1929.

62. The Court held that the plaintiffs were entitled, by virtue of the Treaty and the Supplementary Agreement, to claim the benefits of the Decree of 30 September 1953, and were accordingly entitled to compensation. In the part of its judgement concerning the most-favoured-nation clause, the Court said:

The plaintiffs are assignees of a lease of premises situate at 26 rue Cambon, Paris, and owned by the defendants. It was stated in the deed of assignment of the lease, to which the owners were also parties, that Lloyds Register was engaged in the registration of shipping.

This lease, which expired on April 1, 1955, was tacitly extended, and on June 13, 1955, the plaintiffs asked for its renewal. The defendants refused to renew the lease, on the ground that the premises in question were only subsidiary premises as far as the tenants were concerned, and not essential for the conduct of the plaintiffs' business. They further contended that the plaintiffs were an English Company [and as such] not entitled to claim the benefit of the law relating to business premises ...

...

On April 7, 1956, the defendants asked for the action to be dismissed on the ground that the plaintiffs were a foreign Company...

...

So far as concerns the defendant's contention regarding the nationality of the plaintiff Company, this court is of opinion that by virtue of article 38 of the Decree of September 30, 1953, the provisions thereof do not apply to foreign traders. On the other hand, the Law of May 28, 1943, to which article 38 of the Decree refers, expressly excepts the case of nationals of countries which grant to French citizens the benefits of similar legislation, as well as the case of foreign nationals who are exempt from this requirement of reciprocity by virtue of an international agreement. This applies to British subjects. The Anglo-French Treaty of Commerce and Navigation of February 28, 1882, contains a most-favoured-nation clause, and the interpretative Agreement of May 21 and 26, 1929, applies this clause in the matter of leases. It follows that in these circumstances the plaintiffs are entitled to claim the benefit of the provisions of the Decree of September 30, 1953.

Corneli case

France: Court of Cassation, July 2, 1958

Gazette du Palais, 1958, *part II, p. 217*

International Law Reports, *"Jurisprudence", 1958-II, p. 490*

63. The appellant, an Italian citizen, was convicted under article 1 of the Decree of 12 November 1938 for having failed as an alien, to obtain a trader's permit. He maintained that he was not required to be in possession of a trader's permit because by virtue of the most-favoured-nation clause contained in the Franco-Italian Agreement of 17 May 1946 he was entitled to rely on the Franco-Spanish Treaty of 7 January 1862, which gave Spanish citizens the right to carry on trade in France. The Public Prosecutor contended that the Franco-Spanish Treaty did not exempt Spanish citizens from the requirement of obtaining a trader's permit, and that a letter of the French Minister for Foreign Affairs dated 15 April 1957 which stated that foreign nationals entitled to rely on treaties conferring the right to trade in France were not exempt from the requirement of obtaining trader's permits, was binding on the courts. The appeal was dismissed. The Court said:

The judgement under appeal, in view of the letter of the Minister for Foreign Affairs dated April 15, 1957, finds that the exercise of the right to trade in France which is granted to foreign nationals by international agreements does not exempt foreign nationals from the need to satisfy the necessary—as well as sufficient—requirement, namely, to be in possession of a traders permit, and that this applies in particular to Italian nationals by virtue of the Franco-Italian Agreement of May 17, 1946.

The judgement under appeal thus arrived at a correct decision, without violating any of the provisions referred to in the notice of appeal.

Notwithstanding that international agreements can only be interpreted by the Contracting Parties, the interpretation thereof, as far as France is concerned, is within the competence of the French Government, which alone is entitled to lay down the meaning and

scope of a diplomatic document. The Franco-Italian Agreement of May 17, 1946, provides that Italian nationals are entitled to the benefit of the most-favoured-nation clause, and the Treaty of January 7, 1862, between France and Spain, on which the appellant relies and which applies to Italian nationals with regard to the exercise of trading activities must, according to the interpretation given by the Minister for Foreign Affairs, be understood as follows: Although the provisions which are applicable to foreign nationals must not, if they are not to violate the provisions of the international agreements, result in restricting the enjoyment of the rights which the Treaty confers on Spanish nationals, the duty imposed upon a Spanish trader to be in possession of a special trader's permit does not affect the enjoyment of those rights but only the conditions of their exercise. To be in possession of a trader's permit is therefore a necessary as well as sufficient condition, which must be satisfied where a foreign national is to be entitled to rights which are granted to French nationals.

In re Wieboldt's Estate

United States of America: Supreme Court of Wisconsin, 5 November 1958

International Law Reports, 1958-II, *p. 592*

64. The deceased, a resident of Wisconsin, left the residue of his estate to Theodor Heuss, President of the Federal Republic of Germany. According to the will, this was a gift intended to be used for charitable purposes. The County Court held the bequest to be exempt from Wisconsin inheritance tax. The State appealed. It was maintained by counsel for the German Consul General, representing President Heuss, that the legacy was exempt from taxation under the national treatment and most-favoured-nation clauses of the Treaty of Friendship, Commerce, and Consular Rights between the United States and Germany, signed at Washington on 8 December 1923 and the Treaty of Friendship, Commerce, and Navigation between the United States and Germany, signed at Washington on 29 October 1954. The Supreme Court of Wisconsin reversed the judgement of the County Court and the case was sent back for further proceedings. The most-favoured-nation clause respecting the "nationals and merchandise" of each Party applied only to commercial goods and transactions and did not affect legacies. Even if the provisions of the Treaty of Friendship, Commerce and Navigation between the United States and Japan, signed at Tokyo on 2 April 1953 were to be invoked through the most-favoured-nation clause, the most that could be secured through that Treaty would be national treatment, which would not, under the law of Wisconsin, exempt the legacy from taxation. The provisions of the 1954 Treaty regarding national treatment and most-favoured-nation treatment, similarly, did not provide any exemption from taxation for this legacy. Consequently, the legacy was subject to taxation under the law of Wisconsin. Concerning the Treaty with Germany of 8 December 1923, the Court said:

This Treaty was reinstated, as applicable to the present Federal Republic of Germany, by Treaty signed June 3, 1953 and effective October 22, 1954, prior to the testator's death.

The county court based its decision in part on Article IV of the 1923 Treaty of which the pertinent provision relating to disposition of personal property was as follows:

"Nationals of either High Contracting Party may have full power to dispose of either personal property of every kind *within the territories of the other*, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases. (Italics supplied)".

That provision does not support the claim of exemption....

...

It is next contended that other provisions of the 1923 Treaty entitled Germany nationals to national treatment and to unconditional most-favoured-nation treatment with respect to inheritance tax exemption; and that since the Treaty was in effect when testator died on July 1, 1955 it entitled respondent to the benefit of the tax exemption provisions of the Treaty with Japan signed April 2, 1958.

Article I of the 1923 Treaty gave permission to the nationals of each Party to enter, travel and reside in the territories of the other, to do various specified things....

...

... these provisions merely give German nationals the right to carry on specified activities *in this country*, not including receipt and use of bequests, and while here to be free from taxes other or higher than those exacted of our nationals.

Article VII of the 1923 Treaty guaranteed most-favoured-nation treatment with respect to navigation and to imports and exports and duties thereon. Article VIII was as follows;

"The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties."

Manifestly those provisions relate only to commercial goods and transactions and are not sufficient to establish the claimed exemption from inheritance tax.

Respondent contends that certain statement of Secretary of State in recommending the 1923 Treaty to the President and Senate disclosed a purpose to give a broad reciprocity which should be extended to such matters as inheritance taxes. A reading of those documents show, however, that the Secretary was concerned with promoting of international trade. Thus he considered the adoption of the unconditional favoured nation policy as "the simpler way to maintain our tariff policy" and thereby to extend our trade abroad, and he referred to "the interest of the trade of the United States in competing with the trade of other countries"....

65. With regard to the question whether the Treaty with Japan of 2 April 1953 established reciprocity with respect to exemption from inheritance taxes, the Court said:

Nothing of the kind appears in the Japanese Treaty....

Paragraph 1 in turn provides that nationals of either Party residing or engaged in gainful or philanthropic activities within the territory of the other Party shall not be subject to the payment of taxes on "income, capital, transactions, activities or any other object... within the territories of such other Party, *more burdensome than those borne by nationals* and companies of *such other Party*". [Italics not in original treaty.]

If this applies to inheritance taxes at all, it appears to mean only that the United States shall aim to apply in general the principle that Japanese nationals not resident nor engaged in business shall

not be subject to payment of inheritance taxes "more burdensome than those borne by nationals" of the United States. Doubtless any restriction thereby placed upon the United States operates upon the state of Wisconsin.

Assuming for present purposes that by virtue of the Treaty with Germany Dr. Heuss is entitled to as favorable treatment with respect to inheritance taxation as a national of Japan, and disregarding the precatory tone of the words "it shall be the aim ... to apply in general", we may conclude that at most the bequest to him is exempt by virtue of the Treaties only if it would be exempt were he a resident of Wisconsin and directed by the will to use the money in Wisconsin.

Even if such were the case, however, the bequest would not be exempt. Sec. 72.04(I) of the law would apply. That subsection exempts transfers to individuals residing in this state only where they take "*as trustees, in trust* exclusively for ... charitable ... purposes in this state" ....

66. Concerning the Treaty with Germany of 29 October 1954, the Court said:

...

Article III provides that nationals of one Party shall be free from molestation and shall receive protection and security in the territories of the other Party, and shall be accorded no less favourable treatment "for the protection and security of their persons and their rights" than is accorded nationals of the other Party or of any other country. We cannot construe this Article to include tax exemption.

Article XXV defines "national treatment" and "most-favoured-nation treatment" as used elsewhere in the Treaty.

Article XI relates to taxation. The first four sections are identical in all material respects with the provisions of Article XI of the Japanese Treaty ... They are insufficient to establish the right to the exemption claimed in the present case ....

By section 5 of Article XI, each Party to the Treaty reserves the right to "Apply special provisions in allowing, to nonresidents, exemptions of a personal nature in connection with income and inheritances taxes." It is unnecessary to decide what that means, for clearly it does not establish mandatory reciprocity.

...

It may be observed in conclusion that even if the Treaty in effect on the date of testator's death were to be construed as establishing a rule of reciprocity under which Wisconsin would have to exempt a bequest to a German national and resident if Germany would exempt a comparable bequest in the reverse situation, respondent's case for exemption would still be very doubtful. While it appears that the Federal Republic of Germany would not tax a transfer from a testator residing in that country to a person residing in the United States made under the condition that it must be used solely for charitable purposes, the statement of the German Secretary of the Treasury which appears in the record is careful to add "if such use is assured". Presumably this means that there must be some assurance enforceable by legal process, that the money will be used for the purpose specified by the testator. Therefore the assumed reciprocity would extend only to a case where the charitable use, on which the Wisconsin resident's bequest to a resident of Germany is conditioned, can be enforced in Germany by some legal means.

The trial court found and it appears to be conceded, that the trust device is not available in Germany. The record is barren of any showing that any other judicial or administrative process would be available to control the disbursement of the funds by the recipient in that country. We are not prepared to take judicial notice of the German laws. In pointing out this feature of the case we do not mean to suggest any doubt that the eminent legatee will properly use the bequest for the specified purpose. We have every confidence that he, and if the occasion arises his successor in office, will disburse the funds with the most scrupulous fidelity to the wishes of the testator. Where, however, tax exemption is conditioned on legal assurance that restrictions will be complied with, moral certainty alone is not enough.

Heaton v. *Delco Appliance Division, General Motors Corp.*

United States of America: Supreme Court of New York, Appellate Division, Third Department, 2 December 1958

International Law Reports, 1958-II, *p. 482*

67. This was an appeal by a British subject from a decision of the Workmen's Compensation Board which directed the payment to him, as an alien, of only one half of the commuted amount of the compensation to which a citizen of the United States would be entitled.[35] The appellant maintained that he was entitled to the same rights as a citizen of the United States under article X of the Treaty of Amity, Commerce, and Navigation between the United States and Great Britain (the Jay Treaty), signed in London on 19 November 1794, and articles II and V of the Convention between the United States and Great Britain relating to the Tenure and Disposition of Real and Personal Property, signed at Washington on 2 March 1899. The Court, which affirmed the decision of the Workmen's Compensation Board, said:

Considering the terms, conditions and circumstances under which Article X became part of the Treaty of 1794 and giving to it the most favorable interpretation, it was never intended by the contracting parties to include our present day form of compensation between employer and employee or anything vaguely similar to it that might have been in effect at the time of the treaty. Its purpose was, by a Treaty of Amity, Commerce and Navigation, to terminate the differences without respect to the merits; to produce mutual satisfaction and understanding; to regulate the commerce and navigation so as to render the same reciprocal to the benefit and satisfaction of both nations. Article X referred to the debts of individuals of both nations and their protection in the event of a war or national differences. It (Article X) was primarily to prevent in the future such unlawful confiscations practiced following the Revolutionary War. The Article was directed to the rights of the individual as such and ineffective to abrogate Section 17 of the Workmen's Compensation Law of the State of New York.

We likewise conclude that Articles II and V of the Convention of 1899 is of no help or solace to the claimant. The wording of Article II is clear that it was intended for the purpose of disposing of personal property by testament, donation or otherwise and it cannot inferentially under any favorable interpretaion be construed to have application to the present facts.

There is no language in the Treaty which can be construed to make claim for death or injuries arising out of the relationship of employer and employee. The right to recover without alleging

[35] Section 17 of the Workmen's Compensation Law reads in part as follows:

"Compensation under this chapter to aliens ... about to become nonresidents of the United States ... shall be the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children ... and except that the board, may at its option, or upon the application of the insurance carrier, shall, commute as of the date of death all compensation to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such compensation as determined by the board. In the case of a resident alien about to become nonresident the future payments of compensation shall be computed as of the date of nonresidence." (*International Law Reports, 1958-II*, p. 484.)

negligence or fault is given solely and exclusively by the statute of which Section 17 is a part. Even though social legislation such as this is subject to liberal interpretation, it cannot be so interpreted as to abrogate the wording and intent of the statute.

... as to the Treaty of 1794 and the Convention of 1899 there is nothing in the language, taking into consideration the time, circumstances and conditions when they were written and also the present day circumstances, that can overcome or abrogate Section 17 of the Workmen's Compensation Law of the State of New York.

...

It has been necessary to document by way of amendment our own Constitution through the years and many new and modern treaties have been executed by this Government and other nations. Section 17, referred to herein, has been described as a harsh statute which finds very little justification in any principle of fairness. However, the fortuitous circumstances here cannot be overcome by judicial interpretation. Our duty is done when we enforce the law as written by the legislative branch of the Government.

Mclane v. *N.V. Koninklijke Vleeswarenfabriek B. Linthorst En Zonen*

Netherlands: Court of Appeal of the Hague, 4 February 1959

Nederlandse Jurisprudentie 1960, *No. 339*

International Law Reports, *vol. 28, p. 494*

68. The appellant, a United States citizen domiciled in Belgium, owed an acknowledged debt to the respondent. When in the Netherlands, he was imprisoned for his debt under an order given by the President of the District Court of Zutphen. The appellant sought to be released by the President of the District Court of The Hague, but his appeal failed. He appealed further to the Court of Appeal of The Hague, relying, *inter alia*, on two treaty provisions by virtue of which, he argued, he should be set free. The first of these was article 24 of the Convention relating to Civil Procedure of 17 July 1905.[36] The appellant argued that the benefit of this article should accrue to nationals of non-signatory States domiciled in the territory of one of the Contracting Parties as well as to the nationals of such Parties. The second provision on which the appellant relied was article III, section I, of the Netherlands-United States Treaty of Friendship, Commerce and Navigation of 27 March 1956.[37] The appellant submitted that he was entitled to benefit from article 24 of the Hague Convention on Civil Procedure through the operation of this most-favoured-nation clause. The Court, which held that the appeal must be dismissed, said:

Since the appellant is a citizen of the United States of America and the United States did not accede to the Convention, it is not open to him to rely upon the protection of Article 24 of that Convention, despite his being domiciled in Belgium, a country that did accede ... The appellant deems his imprisonment to be illegal on account of its being contrary to Article III, section I, of the Netherlands-United States Treaty of Friendship, Commerce and Navigation, which was ratified by the (Netherlands) Act of 5 December 1957 ... This provision, assuming it is binding upon everyone, does not prevent a citizen of the United States from being imprisoned in this country under Article 768 of the Code of Civil Procedure. Civil imprisonment, indeed, does not run counter to the protection of rights which the Kingdom of the Netherlands under the Treaty owes to citizens of the United States. Moreover, from Article V of the Treaty, as from Article 5 of the annexed protocol of signature, it becomes clear that the Treaty is of limited purport only as far as civil procedure is concerned: civil imprisonment is not referred to, still less precluded. A more liberal interpretation of Article III, section I, as sought by the appellant and under which in this country a citizen of the United States would enjoy the protection of Article 24 of the Convention on Civil Procedure without the United States having acceded to it, is therefore, unacceptable to the Court.

The Nyugat—Swiss Corporation Société Anonyme Maritime et Commerciale v. *Kingdom of the Netherlands*

Netherlands: Supreme Court, 6 March 1959

Nederlandse Jurisprudentie 1956, *No. 141, p. 305*; *ibid., 1962, No. 2, p. 13.*

69. On 13 April 1941, the steamship *Nyugat* was sailing outside territorial waters of the former Dutch East Indies. She sailed under the Hungarian flag. The Netherlands destroyer *Kortenaer* stopped her, searched her and took her into Surabaya, where she was sunk in 1942. The plaintiffs claimed that the Supreme Court should give a declaratory judgement to the effect that the *Nyugat* had been unlawfully stopped, searched, captured, diverted from her course, taken into Surabaya and put into use, and that they were entitled to claim compensation for any damage arising from these acts and the loss of the *Nyugat*. They referred to the Tretaty of Friendship, Establishment and Commerce, concluded with Switzerland at Berne on 19 August 1875 and the Treaty of Commerce, concluded with Hungary on 9 December 1924. The Supreme Court upheld its first decision and dismissed the plaintiff's claim. The Supreme Court said:

Shipowners see a direct conflict with the Treaty of Friendship, Establishment and Commerce, concluded with Switzerland at Berne on August 19, 1875, and with the Treaty of Commerce, concluded with Hungary on December 9, 1924. The Supreme Court said in its first judgment that treaties of this nature deal with completely different matters. Against this opinion shipowners advance the argument that application of the régime of the Decrees to the nationals of certain States would amount to discrimination against these nationals which would be incompatible with the *most-favoured-nation clause* * contained in these treaties. In the view of this Court this discrimination originates in measures that are not contested by a most-favoured-nation clause. On the occasion of the speeches shipowners further alleged that the most-favoured-

[36] Article 24 reads (as translated from the official French text):
"Civil imprisonment, whether as a means of enforcement or as a simple preventive measure, may not, in civil or commercial proceedings, be imposed on aliens who are nationals of one of the contracting States in cases where it would not be imposed on nationals of the country. A circumstance which may be invoked by a national domiciled within the country to secure the ending of civil imprisonment must produce the same effect for the benefit of a national of a contracting State, even if that circumstance arises outside the country".

[37] This provision reads:
"Nationals of either Party within the territories of the other Party shall be free from molestations of every kind, and shall receive the most constant protection and security. They shall be accorded in like circumstances treatment no less favourable than that accorded nationals of such other Party for the protection and security of their persons and their rights. The treatment accorded in this respect shall in no case be less favourable than that accorded nationals of any third country or that required by international law."

* Italics added by Secretariat.

nation clause could undoubtedly be invoked in the present case, since the present situation had been dealt with in certain treaties of commerce. As an example they quoted the Treaty of May 1, 1829, with the Republic of Colombia, providing that "if at any time unfortunately a rupture of the ties of friendship should take place", the subjects of the one party residing in the territory of the other party "will enjoy the privilege of residing there and of continuing their business as long as they behave peacefully and do not violate the laws; their property will not be subject to seizure and attachment." The invoking of this provisions fails, since it is unacceptable that a rupture of friendly relations, as understood in the year 1829, can be assimilated to a severance of diplomatic relations as it occurred during the second world war; in the present case the determination of the flag was also based upon the assumption by Hungary of an attitude contrary to the interests of the Kingdom by collaborating in the German attack against Yugoslavia. This case surely does not fit in the provisions of the 1829 treaty. From the preceding it follows that shipowners are wrong in their opinion that the Court should not apply the Decrees as being contrary to international provisions.

Guiseppe et al. v. *Cozzani et al.*

United States of America: Supreme Court of Mississippi, 22 February 1960

International Law Reports, *vol. 31, p. 1*

70. This was a suit in equity seeking recognition of the alleged rights of the complainants, as tenants in common with the defendants, of property passing under the will of Frank Toney, who had left the balance of his estate to his wife for life and then to his nephews and nieces and sister. Toney's wife died in 1933. The complainants, all of whom were residents of Italy, alleged that they were nephews and nieces or descendants of nephews and nieces of Toney, and descendants of his sister. The defendants alleged that, under the law of Mississippi, aliens were precluded from holding land. The Chancery Court gave judgement for the defendants, and the complainants appealed.

71. The Court held that the judgement of the Court below must be reversed and the case remanded. The statutory prohibition against the ownership of land by aliens was inconsistent with the Treaty of Commerce and Navigation of 1871 between the United States and Italy, which included a most-favoured-nation clause securing to Italian nationals the right to inherit and hold property which was recognized by the Treaty of 1782 between the United States and the Netherlands. In the event of a conflict between a statute of a state of the United States and a treaty, the latter prevailed. The Court said:

> There are two pertinent treaties involved in this case: (1) "Treaty between the United States of America and the Kingdom of Italy, Commerce and Navigation", dated February 26, 1871 .... That Treaty in Article 22 thereof reads as follows: "As for the case of real estate, the citizens and subjects of the two contracting parties shall be treated on the footing of the most-favored-nation". ... In this connection there should be considered the Treaty of 1782 between the United States and the Kingdom of the Netherlands .... (2) The "Treaty of friendship, commerce and navigation between the United States of America and the Italian Republic" dated February 2, 1948, provides among other things that: "Property of nationals ... of either High Contracting Party shall not be taken ... without due process of law". Article 5, paragraph 2. ... See also paragraph 2 of Article 7 of the said Treaty in which it is provided in substance that a non-resident alien shall be allowed a term of three years in which to sell or otherwise dispose of property, and that this term is to be reasonably prolonged if circumstances render it necessary ... Assuming that the Treaty in question was not intended to have a retroactive effect, then the three-year provision for selling or otherwise disposing of the property of a non-resident alien would have no effect on the instant case since the rights of the complainants, if any, accrued as owners of vested remainder estates on the death of Frank Toney in 1906, and their rights to possession of the property accrued at the death of Emma Toney in 1933 ...

Kolovrat et al. v. *Oregon*

United States of America: Supreme Court, 1 May 1961

International Law Reports, *vol. 32, p. 203*, U.S. Reports, *vol. 366, p. 187*

72. Two Oregon residents died intestate in 1953, leaving personal property there and no heirs except certain residents and nationals of Yugoslavia, who would have inherited the property but for the provisions of Oregon Revised Statutes, (Section III.070 (1963)[38]). The state of Oregon claimed the right to decedent's property as escheated property and contended that the Yugoslav heirs were ineligible to inherit. The heirs contended that their rights to inherit were secured by article 11 of the Treaty between the United States and Serbia of 14 October 1881 which was recognized to be in force between the United States and Yugoslavia. The Circuit Court entered orders denying the State's petitions for escheat and determining the rights of the alien heirs to take their distributive shares in the estate. It held that United States citizens had the right to receive payments from estates of persons dying in Yugoslavia, and that consequently the challenged condition in the statute was met.

73. On appeal, the Supreme Court of Oregon decided that the decrees of the Lower Court must be reversed. The Supreme Court of the United States held that the Judgement of the Supreme Court of Oregon must be reversed and the cause remanded for further proceedings. Under the Treaty of 1881, with its most-favoured-nation

[38] The Oregon Revised Statutes, Section III.070 (1963) provides:

"(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(*a*) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(*b*) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(*c*) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the Governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

"(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property."

clause, non-resident heirs had the same right to inherit as they would have had if they were United States citizens living in Oregon. The assent of the United States to the Articles of Agreement of IMF, with which the Yugoslav exchange controls were consistent, prevented a State from deciding that such controls could be the basis for defeating rights conferred by the Treaty of 1881. The Court said:

The very restrictive meaning given the Treaty by the Oregon Supreme Court is based chiefly on its interpretation of this language: "In all that concerns the right of acquiring, possessing or disposing of every kind of property ... citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant ... in each of these States to the subjects of the most favoured nation." This, the State Supreme Court held, means that the Treaty confers a right upon a United States citizen to acquire or inherit property in Serbia only if he is "in Serbia" and upon a Yugoslavian citizen to acquirc property in the United States only if he is "in the United States". The State Court's conclusion, therefore, was that the Yugoslavian complainants, not being residents of the United States, had no right under the Treaty to inherit from their relatives who died leaving property in Oregon. This is one plausible meaning of the quoted language, but it could just as plausibly mean that "in Serbia" all citizens of the United States shall enjoy inheritance rights and "in the United States" all Serbian subjects shall enjoy inheritance rights, and this interpretation would not restrict almost to the vanishing point the American and Yugoslavian nationals who would be benefited by the clause. We cannot accept the State Court's more restrictive interpretation when we view the Treaty in the light of its entire language and history. This Court has many times set its face against treaty interpretations that unduly restrict rights a treaty is adopted to protect.

The 1881 Treaty clearly declares its basic purpose to bring about "reciprocally full and entire liberty of commerce and navigation" between the two signatory nations so that their citizens "shall be at liberty to establish themselves freely in each other's territory". Their citizens are also to be free to receive, hold and dispose of property by trading, donation, marriage, inheritance or any other manner "under the same conditions as the subjects of the most favoured nation". Thus, both paragraphs of Art. II of the Treaty which have pertinence here contain a "most favoured nation" clause with regard to "acquiring, possessing or disposing of every kind of property". This clause means that each signatory grants to the other the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. In this connexion we are pointed to a Treaty of this country made with Argentina before the 1881 Treaty with Serbia, and Treaties of Yugoslavia with Poland and Czechoslovakia, all of which unambiguously provide for the broadest kind of reciprocal rights of inheritance for nationals of the signatories which would precisely protect the right of these Yugoslavian claimants to inherit property of their American relatives ...

We hold that under the 1881 Treaty, with its "most favoured nation" clause, these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon; but, because of the grounds given for the Oregon Supreme Court's holding, we shall briefly consider whether this treaty right has in any way been abrogated or impaired by the monetary foreign exchange laws of Yugoslavia.

Oregon law, its Supreme Court held, forbids inheritance of Oregon property by an alien living in a foreign country unless there clearly exists "as a matter of law and unqualified and enforceable right" for an American to receive payment in the United States of the proceeds of an inheritance of property in that foreign country. The State Court held that the Yugoslavian foreign exchange laws in effect in 1953 left so much discretion in Yugoslavian authorities that it was possible for them to issue exchange regulations which might impair payment of legacies or inheritances abroad and for this reason Americans did not have the kind of "unqualified and enforceable right" to receive Yugoslavian inheritance funds in the United States which would justify permitting Yugoslavians such as petitioners to receive inheritances of Oregon property under Oregon law. Petitioners and the United States urge that no such doubt or uncertainty is created by the Yugoslavian law, but contend that even so this Oregon state policy must give way to supervening United States-Yugoslavian arrangements. We agree with petitioners' latter contention.

The International Monetary Fund (Bretton Woods) Agreement ... to which Yugoslavia and the United States are signatories, comprehensively obligates participating countries to maintain only such monetary controls as are consistent with the terms of that Agreement. The Agreement's broad purpose, as shown by Art. IV, para. 4, is:

> "to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations." [39]

Article VI, para. 3, forbids any participating country from exercising controls over international capital movements "in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments ..." [40] Article 8 of the Yugoslavian laws regulating payment transactions with other countries expressly recognizes the authority of "the provisions of agreements with foreign countries which are concerned with payments". In addition to all of this, an Agreement of 1948 between (the United States) and Yugoslavia obligated Yugoslavia, in the words of the Senate Report on the Agreement,

> "to continue to grant most-favoured-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia ... [and] Yugoslavia is required, by Article 10, to authorize persons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purpose."

These treaties and agreements show that this Nation has adopted programmes deemed desirable in bringing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange. These arrangements have not purported to achieve a sufficiently rigid valuation of moneys to guarantee that foreign exchange payments will at all times, at all places and under all circumstances be based on a "definitely ascertainable" valuation measured by the diverse currencies of the world. Doubtless these agreements may fall short of that goal. But our National Government's power has been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our Constitution. After the proper governmental agencies have selected the policy of foreign exchange for the country as a whole, Oregon of course cannot refuse to give foreign nationals their treaty rights, because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities. Our National Government's assent to these international agreements, coupled with its continuing adherence to the 1881 Treaty, precludes any State from deciding that Yugoslavian laws meeting the standards of those agreements can be the basis for defeating rights conferred by the 1881 Treaty.

Semon v. *Roncallo*
France, Cour d'appel de Paris, 6 July 1961
Clunet, *vol. 89 (1962), p. 420*

74. It follows from the Franco-Colombian Establishment Convention of 16 March 1955 that the nationals

[39] IMF, *Articles of Agreement of the International Monetary Fund* (Washington, D.C.), p. 7, article IV, section 4 (*a*).

[40] *Ibid.*, p. 17, article VI, section 3.

of both States enjoy most-favoured-nation treatment in the exercise of civil rights, and in particular the right to acquire and possess movable and immovable property. It also follows that there is assimilation to nationals in respect of the leasing of residential accommodation. The Court of Appeal of Paris inferred from this that a Colombian could exercise the right to a premium under art. 19 of the Act of 1 September 1948 without being defeated by the objection that he did not reside in France. In fact, "no provision of the enactment above mentioned imposes on Colombian nationals the obligation to reside in France in order to exercise their rights".

Doulgeris v. *Bambacus*

United States of America: Supreme Court of Appeals of Virginia, 31 August 1962

International Law Reports, *vol. 33, p. 408*

75. In a proceeding by an administrator to determine the distributees of a decedent's estate, the plaintiff, a Greek national, contended that she was the sister by adoption of the deceased having adopted under the law of Greece as the daughter of the decedent's father. The lower Court found that the policy of the adoption laws of Greece was contrary to the public policy of Virginia, and that the plaintiff was therefore not entitled to the status of adopted sister of the decedent and the right under Virginia laws to share in his estate as such. The plaintiff contended, *inter alia*, that the finding of the lower Court failed to recognize and give effect to the Treaty of Friendship, Commerce, and Navigation with Greece of 3 August 1951.

76. On appeal, the decree of the lower Court was affirmed. The Court stated that such refusal to recognize the plaintiff's status as adopted sister did not contravene the terms of a most-favoured-nation clause in the treaty.

There is no substance to the appellant's claim that the refusal of the lower Court to give her the status of an adopted child within the meaning of our statutes violates the rights guaranteed to her under the existing Treaty between the United States of America and the Kingdom of Greece ... The decree does not deny the right of inheritance to the appellant under the laws of Virginia. What it denies to her is the right to inherit by virtue of her status as an alleged adoptive relative of the decedent—a status which has been fixed in a proceeding the purpose and object of which are contrary to the public policy of this State. In refusing to recognize a status thus fixed, the courts of Virginia treat alike the proceedings of all other States and foreign countries. We refuse to recognize the proceedings of any State or foreign country which offend our public policy ... What the appellant asks here is that we afford to her better treatment than we afford to the citizens of other states or nations, that we recognize her status as an adoptive relative of the decedent although it had been fixed in a proceeding whose purpose and object are repugnant to our laws. The Treaty upon which she relies guarantees to the nationals of Greece no such preferred right.

In re: Sciama and Soussan

France: Tribunal correctionnel de la Seine, 27 November 1962

Clunet, *vol. 90 (1963), No. 1, p. 762-763*

77. The Franco-Italian Convention of 23 August 1951 provides that the nationals of both countries shall enjoy most-favoured-nation treatment in the exercise of trade. In this case the Tribunal correctionnel de la Seine said:

Whereas Sciama, being of Italian nationality, may legitimately claim the benefit of article 2 of the Treaty of Establishment of 23 August 1951 between France and Italy, which provides: "The nationals of each of the High Contracting Parties shall enjoy in the territory of the other party most-favoured-nation treatment with regard to ... the practice of trade ...", and whereas, consequently, he is entitled to rely on the provisions of article 1 of the Convention concluded on 7 January 1862 between France and Spain, which provides that: "The subjects of both countries may travel and reside in the respective territories on the same footing as nationals ... practise both wholesale and retail trade operations ..."

Christian Dior v. *Jackson*

France: Tribunal de grande instance de la Seine, 17 January 1963

Clunet, *vol. 90 (1963), No. 1, p. 1068*

78. A husband was requested to pay for clothes which his wife had ordered from a fashion designer. Domiciled in Switzerland, and of British nationality, he raised the objection of incompetence against the action brought by the French fashion designer as plaintiff. He maintained in the first place that the latter was not entitled to rely on article 14 of the Civil Code relating to the obligations contracted by a foreigner in France towards a French citizen on the ground that he expressly denied having contracted personally with the plaintiff company. He further relied on the Franco-British Convention of 28 February 1882, and, without disregarding the fact that this Convention, on commercial and maritime relations "was not of general effect and did not allow British subjects to rely on the most-favoured-nation clause", he maintained that the exchange of letters of interpretation of 21 and 25 May 1929 had extended the scope of application of the Convention to establishment, so that the most-favoured-nation clause would entitle British subjects to rely on treaties stipulating the assimilation of foreigners to nationals, and thereby on the benefit of Conventions on procedure excluding the application of articles 14 and 15, thus obliging the French plaintiff to sue the foreign subject before the court of his place of domicile. The Tribunal pointed out that the exchange of letters referred to granted most-favoured-nation treatment to British subjects in the matter of leases only and applied solely to British subjects settled in France. The Tribunal said:

Whereas the most-favoured-nation clause, which is entirely appropriate in the context of an economic régime, is much less relevant to matters of procedure and should not be applicable to procedure unless the terms of the treaty declare in sufficiently explicit terms that it is so applicable;

Whereas the agreements of 1929 had a specific object; and whereas they are the consequence of the restrictive effect attributed to the basic Convention of 1882, whereby British subjects have always been held liable for the deposit of security for costs and as ineligible to benefit from the provisions of the Act on Leases of 1 April 1926;

Whereas the purpose of the agreements of 1929 is thus made clear; and whereas their sole purpose is to ensure for British subjects and, reciprocally, for aliens of French nationality in the United Kingdom, the benefit of the Act on Leases;

Whereas, in fact, in the body of the letter of 21 May 1929, from the Ambassador of Great Britain in Paris addressed to the French Minister for Foreign Affairs, it is stated that negotiations were conducted between the High Contracting Parties with regard to the legislation on leases and not on the occasion of its enactment;

Whereas, furthermore, the Decree of 16 June 1935 specifies that it relates to commercial and maritime relations within the sphere of application of the Act on Leases;

Whereas, moreover, according to the commentary which precedes that Decree, the letters of 21 and 25 May 1929 recognize that the most-favoured-nation clause embodied in the Convention of 1882 assures to nationals of both countries the benefit of legislation on leases;

Whereas the specific nature of this purpose would preclude the extension of the agreements to another purpose, the principle of the restrictive interpretation of the diplomatic agreements in question being established;

Whereas, moreover, J., a British national domiciled in Switzerland, may not rely on a treaty of establishment which grants the benefit of the most-favoured-nation clause only to British nationals established in France and therefore entitled to carry on a remunerative activity there on a permanent basis;

Société technique de limonaderie v. *Elias Ilya*

France: Cour de cassation, 8 March 1963

Bulletin des arrêts...[41] *(1963), IV, No. 234, p. 190*

79. Under the terms of the Act of 28 May 1943, the ordinary or exceptional laws concerning leases are applicable to aliens who are nationals of countries which have concluded with France diplomatic agreements providing, directly or indirectly, for the assimilation of aliens to nationals in respect of civil rights. It was therefore with good reason that, in the application of such legislative provisions and of the Franco-Egyptian Treaty of Montreux of 8 May 1937, rendered enforceable by the Decree of 17 March 1939, a court of appeal granted the right to recover possession to a landlord who was an Egyptian national. The Court said:

Whereas the appeal is grounded in a complaint that the impugned decision by the Court of Appeal of Dakar allowed a landlord of Egyptian nationality to exercise the right to recover possession prescribed in article 21 of the Decree of 30 June 1952, even though that right is reserved to landlords of French nationality, on the ground that the diplomatic agreements existing between France and Egypt entitled Egyptian nationals to the rights accruing from the legislation on leases, although neither the agreement concluded between France and Egypt nor the most-favoured-nation clause were directed to the legislation on leases and could not entitle a foreign national to exceptional rights which the authors of those agreements could not have taken into consideration;

Whereas, however, under the terms of the Act of 28 May 1943, the ordinary or exceptional laws concerning leases are applicable to aliens who are nationals of countries which have concluded with France diplomatic agreements providing, directly or indirectly, for the assimilation of aliens to nationals in respect of civil rights;

Whereas the Franco-Egyptian Treaty of Montreux, concluded on 8 May 1937 and approved by the French Parliament on 4 January 1939, was promulgated by the Decree of 17 March published in the *Journal officiel* of 29 March 1939, and whereas the Decree of 17 March reproduces and renders enforceable the provisions of two letters exchanged on 8 May 1937 between the heads of the French and Egyptian delegations, which provided that:

"nationals of each of the two countries shall exercise in the national territory, in conformity with national laws and regulations, the right to acquire all kinds of movable and immovable property, whether by purchase, exchange, gift, succession, devise or in any other manner, and freely to dispose thereof... in the exercise of the rights defined above, they shall moreover enjoy most-favoured-nation treatment"; and whereas it follows therefrom that the Court of Appeal of Dakar had good reason to confirm the notice to quit served on 27 February 1956 and to grant the right to recover possession prescribed in article 21 of the Decree of 30 June 1952 to Elias Ilya, a landlord of Egyptian nationality, pursuant to both the provisions of the law and the diplomatic agreements specified above; and whereas there are thus no grounds for the appeal;

For these reasons:

Rejects the appeal lodged against the decision issued on 22 February 1957 by the Court of Appeal of Dakar.

Consul General of Yugoslavia at Pittsburgh v. *Pennsylvania*

United States of America: Supreme Court, 6 January 1964

U.S. Reports, *vol. 375, p. 395*

International Law Reports, *vol. 35, p. 205*

80. Belemecich died intestate in Pennsylvania. His heirs were residents of Yugoslavia. The estate was ordered by the Orphan's Court to be held by the Department of Revenue of Pennsylvania. The Consul General of Yugoslavia appeared at the hearing in the Orphan's Court. He contended that the beneficiaries would have full control of the property distributed. He also argued that the matter was governed by article II of the Treaty of Commerce with Serbia of 2 October 1881. Therefore, the Court could not invoke state law to prevent the heirs from receiving their inheritance. On appeal, the Supreme Court of Pennsylvania, in affirming the decision of the Orphan's Court, said:

... The appellant argues also that the order of the Court below offends against the Treaty of 1887 between the United States and Serbia (the predecessor sovereign nation of the Republic of Yugoslavia). The point is not well taken. That Treaty provides briefly that there shall be reciprocal rights of inheritance between the citizens of the two nations. Under the decision in this case, there is no denying to the citizens of Yugoslavia the right of inheritance through American relatives. The Act of the Legislature, upon which the Court based its adjudication, is intended, not to breach the sanctity of the treaty mentioned but to guarantee that its provisions are upheld so that the beneficiaries will actually and not only technically or figuratively receive the amounts due them... Nor does the case of *Kolovrat et al. v. Oregon* [42] cited by the appellant, help his position. The Oregon statute involved in that litigation was a confiscatory one. The one before us is merely custodial...

81. The Supreme Court of the United States held *per curiam* that the decision of the Supreme Court of Pennsylvania must be reversed.

Corbett v. *Stergios*

United States of America: Supreme Court of Iowa, 11 February 1964

International Law Reports, *vol. 35, p. 208*

82. Nicolas Stergios, a Greek immigrant resident in Iowa, made a will leaving most of his property to his

[41] *Bulletin des arrêts de la Cour de cassation en matière civile* (Paris). Referred to hereafter as *Bulletin des arrêts...*

[42] See paras. 72-73 above.

wife and the balance to a niece. After executing the will, he adopted through Greek officials and under Greek procedures a Greek child, Constantine Neonakis, who lived in Greece. Stergios died in 1958, several months after the adoption, leaving an estate consisting principally of real estate. His will was proved. The estate was closed and the property was distributed in accordance with the will. In February 1961, Corbett was appointed guardian of the property of Neonakis. He brought an action to reopen the estate and to recover two thirds of the estate from the widow, contending that Neonakis was the heir of Stergios with a right to inherit because the will was made before the adoption. Corbett argued that the child's right to inherit was secured by article IX, section 2, of the Treaty of Friendship, Commerce and Navigation between the United States and Greece of 3 August 1951. The widow contended that the Treaty did not secure the right of Neonakis to inherit and that under State law Neonakis was not eligible to inherit because it had not been shown that Greece gave reciprocal rights to United States citizens as required under Iowa Code 567.8 (1962). The Trial Court dismissed the petition of the guardian to reopen the estate. On appeal, the Supreme Court of Iowa affirmed this decision. Petitioner had failed to prove the reciprocity required under Iowa law and therefore Neonakis could not inherit. The Treaty did not by its terms displace State law relating to inheritance rights, either through its national treatment or most-favoured-nation clauses.

In connexion with the most-favoured-nation clause, the Supreme Court of Iowa said:

Under brief point 3 appellant contends his ward is entitled to some type of benefits by reason of the most-favoured-nation clause in the Treaty. A peculiar situation pertains to the Treaty as to most-favoured-nation treatment.

The Treaty with Greece provides for most-favoured-nations treatment in regard to only certain subjects in the Treaty. Among the 26 articles of the Treaty providing for most-favoured-nations treatment are only articles II, VI, VII, XII, XVII, XIX and XXI and XXIV.

There is no such most-favoured-nations provision in article IX of the Friendship Treaty with Greece. This is the article which plaintiff-appellant attempts to apply in seeking relief from the Court. The other articles specifically spell out when the most-favoured-nations provision is to apply. Since article IX contains no such provision, we can only assume that Congress did not intend to apply the most-favoured-nations provision to this article.

The German Treaty in article XI specifically refers to the most-favoured-nations treatment in disposing of property. This is different [from] the Greek Treaty which does not mention such treatment.

Since the Treaties were enacted at approximately the same time, we can only assume that Congress intended that as far as the Greek Treaty is concerned the most-favoured-nations treatment would not apply to article IX.

We have here a different situation [from] the case of *Santovincenzo* v. *Egan*, 284 U.S. 30 [43] ... cited in plaintiff-appellant's brief. There the Treaty specifically contained a most-favoured-nations treaty provision with regard to the subject under consideration. This is different [from] the Greek Treaty as far as article IX is concerned. It would be wrong to apply the most-favoured-nations treaty clause to the pertinent article of the Greek Treaty when it contained no such provision. This would give it an application broader than intended.

NOTE: On appeal, the Supreme Court of the United States reversed the judgement of the Supreme Court of Iowa. The Court said:

In light of our construction of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, a construction confirmed by representations of the signatories whose views were not available to the Supreme Court of Iowa, the judgement is reversed. (*Corbett* v. *Stergios*, 381 U.S. 124)

Yacoub v. *Jean Francis partners*

France: Cour de cassation, 24 June 1965

Bulletin des arrêts..., *1965, III, No. 398, p. 365*

83. Having regard to the principle *ejusdem generis*, the Decree of 25 April 1935 extending to Syrian and Lebanese nationals the benefit of the most-favoured-nation clause, not having been rendered applicable in Guadeloupe, cannot be relied upon by a Lebanese merchant installed in that Territory to claim the renewal of his commercial lease. The Court said:

Whereas the effect of the impugned confirmative decision (Basse-Terre, 2 February 1959) was that Yacoub, a Lebanese national, having received notice on 26 March 1956 to quit the commercial premises situated at Pointe-à-Pitre (Guadeloupe) which had been leased to him by the Jean Francis partners, was held to have no right to renewal of his lease by reason of his nationality, pursuant to article 38 of the Decree of 30 September 1953;

Whereas an appeal against that decision has been filed stating that it denied a Lebanese national the right to renew his commercial lease on the ground that the most-favoured-nation clause envisaged by the Decree of 25 April 1935 issued in favour of Syrian and Lebanese nationals was limited strictly to certain specific matters, notably the actual practice of trade, even though, on the one hand, in protecting the establishment, residence and practice of trade by such nationals, the Government, according to the contentions of the appeal, necessarily intended to protect the instrument by which commercial operations are carried on, namely, the business itself, and on the other hand, by directing the provisions also to possession and occupation of all movable and immovable property, the authors of the said Decree intended to extend its scope to the commercial premises, and the right to lease, to which the right of renewal relates;

Whereas, however, having regard to the principle *ejusdem generis*, the Decree of 25 April 1935, which was not rendered applicable in Guadeloupe, could not be invoked by Yacoub to claim the renewal of his lease; and whereas therefore the appeal is not justified;

For these reasons:

Rejects the appeal against the decision given on 2 February 1959 by the Court of Appeal of Basse-Terre.

Application of the Treaty of Commerce and Navigation between Finland and Denmark

Finland: Supreme Court of Administration, 19 October 1966 [44]

84. The Commerce and Navigation Treaty between Finland and Denmark provided that neither Party should impose other of higher revenues than those

[43] See para. 92 below.

[44] Information received from the Government of Finland. No further information regarding this case is available.

imposed on its nationals on the nationals of the other Party. A stamp duty had been fixed on the deed as a Danish national sold a piece of real estate in Finland. The amount exceeding the stamp duty to be collected from a Finnish national in a similar case was ordered by the Court to be returned to the Danish national on the basis of the most-favoured-nation clause contained in the Commerce and Navigation Treaty.

Madelrieu v. *Linic*

France: Cour de cassation, 15 June, 1967

Bulletin des arrêts..., *1967, IV, No. 480, p. 40*

85. As a result of the Act of 28 May 1943, nationals of foreign countries may be accorded in France the benefits of ordinary and exceptional laws relating to farming leases where the countries of which they are nationals grant to French nationals the benefits of corresponding legislation, or where such legislative reciprocity has been waived under a diplomatic agreement concluded between their countries of origin and France. This does not apply in the case of the Franco-Yugoslav Convention of 30 January 1929, which grants to nationals of each of the contracting parties the option to possess or rent movable or immovable property in the territory of the other party only on the same conditions as those prescribed in the legislation of that country in respect of nationals of any third State and without their being assimilated to nationals. The court said:

Whereas, in invalidating the notice to quit given on 20 February 1962, to take effect in September 1965, by Madelrieu, the landlord, to Linic Stanko, a tenant-farmer of Yugoslav nationality, the court of appeal ruled that the notice to quit was not in conformity with the regulations concerning tenant farming *(statut du fermage)*, although those regulations were applicable to the case, despite the foreign nationality of the tenant-farmer, since article 4 of the Consular Convention of 30 January 1929 between France and Yugoslavia embodies, for the benefit of Yugoslav nationals, a provision equivalent to the most-favoured-nation clause;

Whereas, in giving a judgement to that effect even though article 4 of the Franco-Yugoslav Convention of 30 January 1929 grants to nationals of each of the high contracting parties the option to possess or rent movable or immovable property in the territory of the other party only on the same conditions as those prescribed in the legislation of that country in respect of nationals of any third State and without their being assimilated to nationals, the Court of Appeal failed to give a legal basis for its judgement;

...

For these reasons:

Quashes and annuls the decision given between the parties by the Court of Appeal at Bastia on 2 July 1964.

Application of the Treaty of Commerce and Navigation between Finland and the United Kingdom

Finland: Supreme Court of Administration, 21 January 1969 [45]

86. The Commerce and Navigation Treaty between Finland and the United Kingdom of Great Britain and Northern Ireland provided that neither Party should impose taxes or revenues other than those imposed on its own nationals on the nationals of the other Party. A stamp duty had been fixed on the deed of gift, in respect of a piece of real estate bestowed on a British national in Finland. The amount exceeding the stamp duty to be collected from a Finnish national in a similar case was ordered by the Court to be returned to the British national on the basis of the most-favoured-nation clause contained in the Commerce and Navigation Treaty.

Taxation Office v. *Fulgor (Greek Electricity Company)*

Greece: Council of State, Decision of 28 May 1969 [46]

87. This decision concerned the application to a Swiss company operating in Greece of the provisions of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Greece for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Athens on 25 June 1953. The Swiss company claimed the application of that Convention pursuant to the most-favoured-nation clause included in the agreement ratified by law 3610/1928 on installation and legal protection concluded between Greece and Switzerland. The Greek Council of State said:

Whereas, as it was considered by this Court ... from the rulings of articles 9 and 11, para. two, of this latter treaty, it becomes evident that the tax privileges provided by any one of the contracting parties to the subjects and firms of the ... third country are extended to the subjects and firms of the other contracting party *de jure* and with no ... barter provided by the third country ... This rightful extension of tax privileges without any barter ... [concerning] the subjects of Greece and Switzerland, takes place in any case ... [regardless of] whether these privilcges are provided to the third nation pursuant to home legislation of Greece or Switzerland or pursuant to [a] multiple to home legislation of Greece or Switzerland or pursuant to [a] multiple or bipartite international treaty with the third country and ... [regardless] of the purpose for which they were offered; the more so if this is related to the avoidance of double taxation, since the rulings of above clauses of the Treaty between Greece and Switzerland fail to make any distinction in this respect. Consequently, the application of the rulings of the foregoing Treaty between Greece and Great Britain regarding the income of the Swiss company earned in Greece by virtue of which tax privileges were decreed, was not excluded by the fact that these are included in [the] treaty for the avoidance of double taxation, nor did it depend on the fact ... whether Greek subjects or Greek firms enjoy in Switzerland similar tax privileges as in Great Britain ... Consequently the grounds supported in contradiction in the petition under consideration should be dismissed as being groundless.

Taillens v. *Geinoz*

France: Cour de cassation, 9 November 1970

Bulletin des arrêts..., *1970, III, No. 568, p. 413*

88. The effect of the provisions of the Franco-Swiss Convention of 23 February 1882, which were recognized in the diplomatic notes dated 11 and 26 July 1929 approved by the Decree of 16 June 1933, as equivalent to those providing for the assimilation to French nationals

[45] Information received from the Government of Finland. No further information regarding this case is available.

[46] The English text of this decision was furnished by the Government of Greece.

of nationals of the most-favoured nation, is that Swiss nationals may claim in France the benefit of legislation relating to farming leases. The court said:

Whereas the appeal claims that the impugned decision granted the right of pre-emption to Geinoz, a Swiss national, even though this right is expressly reserved to farmers of French nationality and farmers of foreign nationality whose children have acquired or claim French nationality, which was not the case in these proceedings, and even though the Franco-Swiss Convention of 1882, which is based on the principle of reciprocity of rights, cannot be applied in this case since Swiss legislation does not provide for the right of pre-emption;

Whereas, however, article 869 of the Rural Code, which denies to foreign nationals farming rural lands the benefit of the regulations concerning tenant farming unless they satisfy certain conditions, is of necessity without prejudice to their invocation of the provisions of the Act of 28 May 1943 concerning the application to aliens of legislation relating to leases of premises and farming leases; and whereas the Franco-Swiss Convention of Establishment of 23 February 1882 provides, in article 1, that French nationals shall be received and treated in respect of their properties on the same footing and in the same way as the citizens of Cantons are or may be in the future, and, in article 2, that Swiss nationals shall enjoy the same rights and benefits as are accorded under article 1 to French nationals in Switzerland. and, in article 6, that any favour which one of the parties has granted, or may grant in future, in whatever form, to another Power in respect of the establishment of citizens and the exercise of industrial occupations shall be applicable in like manner and at the same time to the other Party, without it being necessary to conclude a special agreement to that effect; and whereas these latter clauses, which were recognized in the diplomatic notes dated 11 and 26 July 1929, approved by the Decree of 16 June 1933, as equivalent to those providing for the assimilation to French nationals of nationals of the most-favoured-nation, it follows that Swiss citizens may claim in France the benefit of the laws relating to farming leases;

Whereas the substitution of these grounds, to the extent that this is necessary, for those challenged in the appeal vindicates the original judgement; and whereas the first plea should be rejected;

...

For these reasons:

Rejects the appeal against the decision rendered, on 4 December 1967, by the Court of Appeal of Lyons.

III. The most-favoured-nation clause in consular matters

In re: Logiorato's Estate

United States of America: State of New York, New York County Surrogate's Court, February 1901

New York Supplement, *vol. 69, p. 507*

89. The decedent was at the time of his death a resident of New York state. He died intestate. He was a citizen and subject of the Kingdom of Italy, and all of his next of kin were residents of Italy. He left no next of kin residing in the State of New York, and it was alleged in the petition that there were no creditors. The petitioner was the Consul-General of the Kingdom of Italy. The public administrator, though duly cited, made default. The petitioner asserted a right to administration without giving any security, and in preference to the public administrator, and based his claim on the facts as to treaty provisions in the consular treaty of 1878 between the United States and Italy. The letters of administration were granted. The Court said:

Conceding that, under the "most favored nation" clause in the provision of the treaty with Italy relating to the rights, prerogatives, immunities, and privileges of consuls general, the stipulation contained in the treaty of July 27, 1853 with the Argentine republic,[47] becomes a part of the treaty with Italy, I do not find in that stipulation any justification for the conclusion sought. A right to intervene "conformably with the laws" of the state of New York is something different from a right to set aside the laws of the state, and take from a person who, by those laws, is the officer entrusted with the administration of estates of persons domiciled here, and who leave no next of kin within the jurisdiction, the right and duty of administering their assets. And, when the laws of the state required an administrator to give a bond to be measured by the value of assets, nothing in the treaty provision grants to the consul an immunity from this requirement to be obtained merely by asserting, in substance, that he has no knowledge of the existence of any debts... Therefore, the petitioner may have letters on giving the usual security, but that this is done pursuant to our local law, and because the public administrator has refused to act.

Salvatore L. Rocca v. *Thompson*

United States of America: Supreme Court, 19 February 1912

U.S. Reports, *vol. 223, p. 317*

90. Giuseppe Ghio, a subject of the Kingdom of Italy, died intestate on 27 April 1908, in California, leaving a personal estate. His widow and heirs at law, being minor children, resided in Italy. Plaintiff in error, Salvatore L. Rocca, was the Consul-General of the Kingdom of Italy for California. Upon the death of Ghio, Consul-General Rocca made application to the superior court of California for letters of administration upon Ghio's estate. The defendant in error, Thompson, as public administrator made application for administration upon the same estate under the laws of California. The superior court held that the public administrator was entitled to administer the estate. The same view was taken in the supreme court of California. From the latter decision a writ of error was granted, which brought the case to the Supreme Court. The Consul-General based his claim to administer the estate upon certain provisions of the treaty of 8 May 1878, between Italy and the United States.[48] While article XVI only required notice to the Italian consul or consular agent of the death of an Italian citizen in the United States, article XVII gave to consuls and similar officers of the Italian nation the rights, prerogatives, immunities, and privileges which were or may have been hereafter granted to an officer of the same

[47] Art. IX of the treaty between the United States of America and Argentina reads:

"If any citizen of either of the 2 contracting parties shall die without will or testament in any of the territories of the other, the consul-general or consul of the nation to which the deceased belonged, or the representative of such consul-general or consul in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

[48] Articles XVI and XVII read as follows:

"Article XVI. In case of the death of a citizen of the United States in Italy, or of an Italian citizen in the United States, who has no known heir, or testamentary executor designated by him,

(Continued on p. 150.)

grade of the most-favoured nation. It was the contention of the plaintiff in error that this favoured-nation clause in the Italian treaty gave him the right to administer estates of Italian citizens dying in the United States of America, because of the privilege conferred upon consuls of the Argentine Republic by the treaty of 27 July 1853 between that country and the United States.[49] The Supreme Court, which affirmed the judgement of the Supreme Court of California, said:

In this country the right to administer property left by a foreigner within the jurisdiction of a state is primarily committed to state law. It seems to be so regulated in the state of California, by giving the administration of such property to the public administrator. There is, of course, no Federal law of probate or of the administration of estates, and, assuming for this purpose that it is within the power of the national government to provide by treaty for the administration of property of foreigners dying within the jurisdiction of the states, and to commit such administration to the consular officers of the nations to which the deceased owed allegiance, we will proceed to examine the treaties in question with a view to determining whether such a right has been given in the present instance.

This determination depends, primarily, upon the construction of paragraph 9 of the Argentine treaty of 1853, giving to the consular officers of the respective countries, as to citizens dying intestate, the right "to intervene in the possession, administration, and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs". It will be observed that, whether in the possession, the administration of the judicial liquidation of the estate, the sole right conferred is that of intervention, and that conformably with the laws of the country. Does this mean the right to administer the property of such decedent, and to supersede the local laws as to the administration of such estate? The right to intervene at once suggests the privilege to enter into a proceeding already begun, rather than the right to take and administer the property.

...

Emphasis is laid upon the right under the Argentine treaty to intervene in *possession*, as well as administration and judicial liquidation; but this term can only have reference to the universally recognized right of a consul to temporarily possess the estate of citizens of his nation for the purpose of protecting and conserving the rights of those interested before it comes under the jurisdiction of the laws of the country for its administration. The right to intervene in administration and judicial liquidation is for the same general purpose, and presupposes an administration or judicial liquidation instituted otherwise than by the consul, who is authorized to intervene.

So, looking at the terms of the treaty, we cannot perceive an intention to give the original administration of an estate to the consul general, to the exclusion of one authorized by local law to administer the estate.

But it is urged that treaties are to be liberally construed. Like other contracts, they are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view to effecting the objects and purposes of the states thereby contracting.

It is further to be observed that treaties are the subject of careful consideration before they are entered into, and are drawn by persons competent to express their meaning, and to choose apt words in which to embody the purposes of the high contracting parties. Had it been the intention to commit the administration of estates of citizens of one country, dying in another, exclusively to the consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms. For instance, where that was the purpose, as in the treaty made with Peru in 1887, it was declared in article 33.

...

And in the convention between the United States and Sweden, proclaimed 20 March 1911.

...

The Argentine treaty was made in 1853, and the Italian treaty in 1878. In 1894, correspondence between ... the Italian Ambassador and ... Secretary of State, shows that the Italian Ambassador proposed that Italian consuls in the United States be authorized, as were the American consuls in Italy, to settle the estates of deceased countrymen. It was the view of the Department of State of the United States, then expressed, that, as the administration of estates in the United States was under the control of the respective states, the proposed international agreement should not be made. The Acting Secretary of State adverted to the practical difficulties of giving such administration to consular officers, often remotely located from the place where the estate was situated.

...

It is contended that the right secured to a foreign consul to appoint an executor under this act of 1865 is evidence of the fact that the Argentine Republic is carrying out the treaty in the sense contended for by the plaintiff in error; but in this law certainly no right of administration is given to the consul of a foreign country. It is true, he may appoint an executor, which appointment it is provided is to be at once communicated to the testamentary judge.

...

Our conclusion, then, is that, if it should be conceded for this purpose that the most-favored-nation clause in the Italian treaty carries the provisions of the Argentine treaty to the consuls of the Italian government in the respect contended for (a question unnecessary to decide in this case), yet there was no purpose in the Argentine treaty to take away from the states the right of local administration provided by their laws, upon the estates of deceased citizens of a foreign country, and to commit the same to the consuls of such foreign nation, to the exclusion of those entitled to administer as provided by the local laws of the state within which such foreigner resides and leaves property at the time of decease.

(Foot-note 48 continued.)
the competent local authorities shall give notice of the fact to the consuls or consular agents of the nation to which the deceased belongs, to the end that information may be at once transmitted to the parties interested.

"Article XVII. The respective consuls general, consuls, vice consuls, and consular agents, as likewise the consular chancellors, secretaries, clerks or attachés, shall enjoy in both countries, all the rights, prerogatives, immunities, and privileges which are or may hereafter be granted to the officers of the same grade of the most-favored nation."

[49] The reference is to article IX of the Treaty, the text of which is reproduced in note 47 above.

Loewengard v. *Procureur of the Republic and Bonvier (Sequestrator)*

France: Court of Appeal of Lyon (First Chamber), 13 October 1921

Clunet, *vol. 49 (1922), p. 391*

Annual Digest *1919-1922, Case No. 273*

91. Lœwengard, a German national, had been German consul since 1907 at Lyon, where he was engaged in business and owned considerable real property. He left France definitively on 2 August 1914. His property was then sequestered. In 1921, when his property was about to be liquidated, he brought an action against the Procureur of the Republic and the Sequestrator asking

for a declaration that as he was a consul, his personal property could not be liquidated, and consequently for an order discharging the sequestration. On 8 June 1921, the Tribunal Civil de Lyon declined jurisdiction. On appeal, Lœwengard declared that in accordance with the terms of certain diplomatic agreements the consuls of a number of States enjoyed diplomatic immunities in France subject to the condition of reciprocity; he cited in his favour the most-favoured-nation clause included in the Treaty of Frankfurt. The Court held that the appeal must be dismissed and said:

Whereas it is true that under the terms of diplomatic agreements the consuls of a number of States enjoy certain immunities in France, subject to the condition of reciprocity; and whereas Loewengard claims that these immunities are applicable to him because, by the Treaty of Frankfurt, in 1871, the German Empire obtained most-favoured-nation treatment for its nationals; it is, however, sufficient to note, without undertaking a detailed review of the question, that the Treaty of Frankfurt lapsed on the day that war was declared, that its place has now been taken by the Treaty of Versailles and that the French Government has not issued any declaration regulating immunities to be granted to German consuls by reviving the lapsed pre-war régime;

Magno Santovincenzo v. *James F. Egan*

United States of America: Supreme Court, 23 November 1931

U.S. Reports, *vol. 284, p. 30*

92. Antonio Comincio, a native of Italy, died intestate in New York City in 1925, when letters of administration were issued to the respondent as Public Administrator by the Surrogates' Court of New York County. Upon the judicial settlement of the administrator's account, the appellant, the Consul-General of Italy at New York, presented the claim that the decedent at the time of his death was a subject of the king of Italy and had left no heirs or next of kin, and that, under article XVII of the Consular Convention of 8 May 1878 between the United States and Italy [50] the petitioner was entitled to receive the net assets of the estate for distribution to the Kingdom of Italy. The Attorney General of New York contested the claim. The Surrogates' Court, finding that the domicile of the decedent was in New York City, decreed that the balance of the estate, amounting to $914.64, after payment of debts and the sums allowed as commissions and as expenses of administration, be paid into the treasury of New York City for the use and benefit of the unknown kin of the decedent. The decree was affirmed by the Appellate Division of the Supreme Court of the State, and both the Appellate Division and the Court of Appeals of the State denied leave to appeal to the latter court. The decedent was never naturalized, and at the time of his death was an Italian subject. The Supreme Court said:

The provision of article VI of the Treaty with Persia does not contain the qualifying words "conformably with the laws of the country" (where the death occurred) as in the case of the Treaty between the United States and the Argentine Confederation of [27 July] 1853 (art. IX); or the phrase "so far as the laws of each country will permit" as in the Consular Convention between the United States and Sweden of [1 June] 1910 (art. XVI). The omission from article VI of the Treaty with Persia of a clause of this sort, so frequently found in treaties of this class, must be regarded as deliberate. In the circumstances shown, it is plain that effect must be given to the requirement that the property of the decedent "shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country", unless a different rule is to apply simply because the decedent was domiciled in the United States.

The language of the provision suggests no such distinction and, if it is to be maintained, it must be the result of construction based upon the supposed intention of the parties to establish an exception of which their words give no hint. In order to determine whether such a construction is admissible, regard should be had to the purpose of the Treaty and to the context of the provision in question. The Treaty belongs to a class of commercial treaties the chief purpose of which is to promote intercourse, which is facilitated by residence. Those citizens or subjects of one party who are permitted under the Treaty to reside in the territory of the other party are to enjoy, while they are such residents, certain stipulated rights and privileges. Whether there is domiciliary intent, or domicile is acquired in fact, is not made the test of the enjoyment of these rights and privileges. The words "citizens" and "subjects" are used in several articles of the Treaty with Persia and in no instance are they qualified by a distinction between residence and domicile...

•••

It would be wholly inadmissible to conclude that it was the intention that citizens of the United States, making their residence in Persia under this Treaty, would be denied the benefit of article III in case they acquired a domicile in Persia. The provision contemplated residence, nothing is said to indicate that domicile is excluded, and the clear import of the provision is that, so long as they retained their status as citizens of the United States, they would be entitled to the guaranty of article III. The same would be true of Persians permitted to reside here under the Treaty.

Again, the provisions of article V of the Treaty were of special importance, as they provided for extraterritorial jurisdiction of the United States in relation to the adjudication of disputes. It would thwart the major purpose of the Treaty to exclude from the important protection of these provisions citizens of the United States who might be domiciled in Persia. The test of the application of every paragraph of article V with respect both to citizens of the United States and to Persian subjects, clearly appears to be that of nationality, irrespective of the acquisition of a domicile as distinguished from residence.

We find no warrant for a more restricted interpretation of the words "a citizen or subject of either of the contracting parties" in article VI than that which must be given to the similar description of persons throughout the other articles of the Treaty. The same intention which made nationality, without limitation with respect to domicile, the criterion in the other provisions, dominates this provision. The provision of article VI is reciprocal. The property

[50] Article XVII reads:

"The respective Consuls General, Consuls, Vice-Consuls and Consular Agents, as likewise the Consular Chancellors, Secretaries, Clerks or Attachés, shall enjoy in both countries, all the rights, prerogatives, immunities and privileges which are or may hereafter be granted to the officers of the same grade, of the most-favoured-nation."

Pursuant to this agreement, the Italian Consul-General sought the application of article VI of the Treaty of 1856 between the United States and Persia which reads:

"In case of a citizen or subject of either of the Contracting Parties dying within the territories of the other, his effects shall be delivered up integrally to the family or partners in business of the deceased; and in case he has no relations or partners, his effects in either country shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country."

of a Persian subject dying within the United States, leaving no kin, is to be dealt with in the same manner as the property of a citizen of the United States dying in Persia in similar circumstances.

...

Our conclusion is that, by virtue of the most-favoured-nation clause of article XVII of the Consular Convention between the United States and Italy of 1878, the Italian Consul General was entitled in the instant case, being that of the death of an Italian national in this country prior to the termination of the Treaty between the United States and Persia of 1856, to the benefit of article VI of that Treaty, and that the net assets of the decedent should be delivered to him accordingly.

Consequently, the decree was reversed and the cause remanded for further proceedings.

Racca v. *Bourjac*

France: Cour de cassation (Chambre civile, Section sociale), 12 October 1960

Revue critique... *vol. 41 (1961), p. 532*

International Law Reports, *vol. 39, p. 467*

93. On 7 March 1957 Bourjac gave Racca, his tenant farmer, who was an Italian national, notice that he would be dismissed from 8 September 1957. The validity of this dismissal was confirmed on reference to the *Tribunal paritaire des baux ruraux* and on appeal, on the ground that Racca was not entitled to the benefit of the Franco-Italian Convention on Establishment of 23 August 1951 because when the first instance court gave its judgement the decree had not yet been published in the *Journal officiel*. Racca appealed to the Court of Cassation, claiming that the Agreement had retroactive effect so that the most-favoured-nation clause benefited Italians to the extent that nationals of other countries already benefited, by virtue of other diplomatic treaties, from the status of tenant-farmer.

...

94. The Court held that the Franco-Italian Convention gave the benefit of the most-favoured-nation clause to Italians only for the future. In addition, it did not become enforceable in France until it had been published in the *Journal officiel* on 18 December 1957, i.e., after 8 September, the date on which Racca was dismissed. The Court said:

Whereas the impugned confirmative judgement validated the notice of dismissal given by Bourjac on 7 March 1957 to his tenant-farmer Racca, an Italian national, which was to take effect on 8 September 1957; and whereas the appeal maintains that the *Tribunal paritaire* denied Racca the benefit of the Franco-Italian Convention promulgated by the Decree of 9 December 1957 on the ground that the Decree had not been published in the *Journal officiel* when the first instance judgement was given, even though the Franco-Italian Convention granted to nationals of the two contracting parties the benefit of the most-favoured-nation clause, and that the Convention necessarily had retroactive effect inasmuch as, on the date of the promulgation of the Decree, nationals of other countries already benefited, by virtue of other diplomatic agreements, from the regulations concerning tenant farming, Italian nationals being automatically assimilated to nationals of other countries, and the Decree of 18 December 1957 being applicable thenceforth to all current proceedings;—Whereas, however, the Franco-Italian Convention gave the benefit of the most-favoured-nation clause to Italian only for the future and whereas it became enforceable in France only upon the publication in the *Journal officiel* of 18 December 1957 of the Decree of 9 December 1957, in other words, after 8 September 1957, the date on which the contested notice of dismissal was to take effect; and whereas, since it gave to Italian tenant-farmers the right to rely on the regulations concerning tenant farming, it had no retroactive effect; and therefore there were no grounds for its application in respect of the impugned judgement;.

In re Carizzo's Estate

United States of America: The New York Surrogate's Court, 23 January 1961

New York Supplement, *Second Series, vol. 211, p. 475*

International Law Reports, *vol. 32, p. 335*

95. The Consul-General of the Italian Republic in New York petitioned for an order directing payment to him in his representative capacity of a fund deposited for the benefit of Carmine Castellano, an incompetent Italian national residing in Italy. The fund was Castellano's distributive share of a decedent's estate. The Consul contended that the Consular Convention of 28 May 1878 between the United States of America and the Kingdom of Italy, revived by a notification of 6 February 1948, by the United States Government pursuant to the Treaty of Peace with Italy of 10 February 1947, constituted the Consul as attorney in fact of his absent national. Article IX of the Consular Convention provides in pertinent part:

Consuls General, Consuls, Vice-Consuls and Consular Agents may have recourse to the authorities of the respective countries within their district, whether federal or local, judicial or executive ... in order to defend the rights and interests of their countrymen ...

96. The Consul also contended that the "most-favoured-nation" clause in article VII of the Treaty of Friendship, Commerce and Navigation of 2 February 1948 with Italy and in article XVII of the Consular Convention gave him such powers, since the consuls of other nations had this power.

97. The Court held that the application must be granted. The Consul-General had authority to receive funds of a decedents's estate deposited on behalf of an incompetent Italian national without any special mandate. The Court said:

Prior to World War II the courts of this State consistently held that under international law as well as the Consular Convention of May 28, 1878, between the United States of America and the then Kingdom of Italy, an Italian Consul was authorized to maintain a proceeding in any court of competent jurisdiction and to demand payment of a distributive share of a nonresident national from a decedent's estate administered in our courts ....

Following the end of World War II the United States of America and other Allied Powers entered into a Treaty of Peace with Italy which was signed February 10, 1947, and went into force September 15, 1947. That Treaty provides that each Power would notify Italy within a period of six months from its coming into effect, of the previously existing bilateral treaties with Italy which any such Power desired to revive, and to enumerate and register them with the Secretariat of the United Nations, and that all such treaties not so enumerated were to be regarded as abrogated. On February 6, 1948, the Department of State in accordance with said provisions notified the Italian Government that the United

States desired to keep in force certain bilateral treaties and other international agreements with Italy, among them being the Consular Convention of May 28, 1878. It was thereby revived and continued in force (see also Treaty of Friendship, Commerce and Navigation signed February 2, 1948, in force July 26, 1949).

The Treaties and Consular Conventions between the United States and Italy contain a "most-favored-nation" clause, under which the Italian Consul General is entitled to exercise such rights and privileges as are granted to other most favored foreign nations.

A review of the applicable authorities leads to the conclusion that petitioner's authority extends to this proceeding on behalf of an incompetent nonresident national, as well as on behalf of a competent or infant nonresident national, without any special mandate from any of them . . . .