

US no. 3

authority whatsoever to support their position that any of the procedural failings complained of are violative of any statute or the constitution. Consequently, all portions of the complaints which challenge the validity of the procedures must be dismissed.¹³

VIII

In summary, we hold that: (1) the Board has authority to approve branch applications for federal savings and loan associations; (2) its authority to allow or disallow branching of federal associations is not limited by state law except as provided in 12 C.F.R. § 556.5-1(b); (3) the Board's decision to authorize or disallow branching in Illinois was in compliance with that regulation; (4) allowing greater branching powers to federal savings and loan associations than is allowed to state savings and loan associations and state and national banks is not a violation of either the due process or equal protection clauses of the United States Constitution; and (5) the procedures followed by the Board in processing branch applications are not invalid. Consequently, since there are no contested issues of material fact and defendants are entitled to judgment as a matter of law on these points, all aspects of the complaints raising these issues will be dismissed.

All of the cases which were filed after *Lyons* were assigned or transferred to us for determination of those issues common to all or a number of them. Our rulings herein do that. There remains in each of the eight cases the question of whether the Board's decision to approve the particular branch application was arbitrary and capricious. The determination of that question will require an examination of the record in each individual case. Accordingly, except for the *Lyons* case, each case should now either be returned to the judge to

13. *Madia Federal* - additional allegation that it was not given adequate notice of the oral argument on the Talman application raises a

when it was originally assigned or be re-assigned pursuant to the rules of the court. Appropriate orders will be entered in each of the eight cases.

In the Matter of FOTOCROME, INC., Debtor, No. 70 B 209.

United States District Court, E. D. New York, June 4, 1974. *appealed now*

Appeal from a decision of bankruptcy judge which refused to recognize the finality of arbitral award in Japan, in dispute between Japanese corporation and United States corporation which had thereafter filed Chapter XI proceeding, and which held that bankruptcy judge had power to rehear the issues of liability de novo. The District Court, Weinstein, J., held that treaties to which the United States adhered compelled granting the same finality to Japanese arbitration award in United States court it had been allowed in Japanese court.

Decision of bankruptcy judge reversed.

See also, 346 F.Supp. 958.

I. Bankruptcy § 951

By providing, under the Bankruptcy Act, that the court in which a bankruptcy petition is filed shall have "exclusive jurisdiction of the debtor and his property, wherever located," Congress indicated that a Chapter XI court would have power to send its process beyond the boundaries of its district to protect its jurisdiction. Bankr. Act, § 311, 11 U.S.C.A. § 711.

Internal dispute which cannot be resolved on a preliminary motion.

(Case No. 27 F. Supp. 28 (1958))

2. Bankruptcy § 954

Chapter XI court, though granted with nationwide jurisdiction, is still bound in extrajudicial matters by well-established "minimum contacts" principle. Bankr. Act, § 301 et seq., 11 U.S.C. § 701 et seq.

3. Bankruptcy § 954

Japanese corporation which had contracts with American corporation, and thereafter filed a Chapter XI proceeding and the Japanese Arbitration Association, which arbitrated dispute between the corporations in Japan, were shown to have the minimal contacts essential to exercise of jurisdiction by bankruptcy judge. Bankr. Act, §§ 2, sub. 3 and et seq., 11 U.S.C.A. §§ 11(a), 701 et seq.

4. Federal Civil Procedure § 1161

Judicial notice may be taken of articles of Japanese Code of Civil Procedure providing for deposits of arbitrable awards in Japanese courts. Fed. Rule Civ. Proc. rule 44.1, 28 U.S.C.A.; CPLR N.Y. 4311.

5. Arbitration and Award § 82(1)

Under the Treaty with Japan on Friendship, Commerce and Consular Rights, conclusive Japanese arbitration awards which do not violate the public policy of the United States are conclusive in the United States.

6. Arbitration and Award § 82(1)

Where American corporation, which separately filed Chapter XI proceeding, had entered into contract with Japanese corporation, which led to dispute between them being resolved by arbitration proceedings in Japan, bankruptcy judge could not refuse to recognize the finality of Japanese arbitration award, and had no power to rehear the issues of liability de novo, where treaty between United States and Japan, together with the adherence of United States to United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, granted the same finality to the award in an American court as had been allowed in Japanese court, despite anything contrary in the Bankruptcy Act.

9 U.S.C.A. §§ 201-208; Bankr. Act, §§ 11, sub. a, 63, sub. a(5), 301 et seq., 11 U.S.C.A. §§ 29(a), 103(a)(5), 701 et seq.; U.S.C.A. Const. art. 4, § 1; art. 6, cl. 2.

7. Arbitration and Award § 72

Since arbitral award, entered in Japan in dispute between Japanese corporation and United States corporation, had attained the status of a judgment in Japan, it was entitled to confirmation pursuant to terms of United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and under New York statute on recognition of foreign money judgments. 9 U.S.C.A. § 207; CPLR N.Y. 5301-5309.

LOUIS F. ROSENBERG, Brooklyn, N. Y., for debtor.

WALTON CAMPBELL BROWN, WILLIAM M. JOHN, JOHN H. PINTO, JR., GILLARD S. GLOVER, New York City (Whitman & Ransom, New York City, of counsel) for claimant.

MEMORANDUM AND ORDER

WEINSTEIN, District Judge.

The litigants have joined issue where the laws of bankruptcy, foreign arbitration, jurisdiction and judgment recognition overlap. Although the result is troubling, for the reasons indicated below we hold that, in the circumstances of this case, pending foreign arbitration proceedings are not subject to stays by a bankruptcy judge. We recognize that this holding may prefer foreign to American creditors in a limited class of cases.

I. FACTS

Fotochrome, Inc., a New York corporation, fell into dispute with Copal Co., Ltd., a Japanese corporation apparently neither present nor doing business in the United States, over the terms of an agreement to manufacture special cameras in Japan. Copal sought damages of \$651,828.97 for Fotochrome's failure to

"SEAGULLS ON THE WATER—
SOME SHIPS IN A STORM".
A COMMENT ON LANZA V. DREXEL

basis for civil damage actions under the Securities Exchange Act of 1934 (excluding shares divided six-to-four) Second Circuit ruling on issue in Lanza v. Drexel & Co., 214 F.2d 1001 (2d Cir. 1957).

pay: Fotechrome claimed 2930,000.00 for defective cameras.

Under a provision in their contract, the parties proceeded to arbitration before the Commercial Arbitration Association in Tokyo, Japan. All the evidence was presented in thirteen days of hearings, both parties being represented by local counsel.

On March 26th, 1970, while the parties were awaiting issuance of an award by the Arbitration Association, Fotechrome filed a Chapter XI arrangement in the Eastern District of New York. The bankruptcy judge issued the usual order the next day continuing the debtor in possession and staying all proceedings by creditors, including pending arbitrations, under the authority of section 11(a) of the Bankruptcy Act, 11 U.S.C. § 29(a). He ruled:

"That until the further order of this Court, all creditors of the debtor, including their agents, servants and employees and any Marshal of the City of New York and Sheriff of the State of New York, assist in their behalf or in the furtherance of their claims, to and they are hereby restrained and enjoined from commencing or continuing actions, suits, arbitrations, or the enforcement of any claim in any Court against this debtor or taking any further steps or proceedings except before this Court." (Emphasis added.)

After certified copies of this order were delivered to Copal and the Commercial Arbitration Association in Japan, Fotechrome "withdrew" from the arbitral proceedings.

Undaunted, the Arbitration Association published its decision in favor of Copal on September 18, 1970. It awarded damages in the sum of \$624,457.80 with interest and divided costs between the parties. Copal entered judgment on its award in Japan and filed a proof of claim here in the Eastern District of New York. It never entered judgment on the award in an American court on the theory that it was constrained in this country by the stay of March, 1970.

Upon the strength of the stay, the bankruptcy judge refused to recognize the finality of the arbitral award to Copal and ruled that he had power to rehear the issues of liability and amount. This appeal followed.

II. JURISDICTION OF THE BANKRUPTCY COURT

It is not surprising that the Japan Commercial Arbitration Association made its award despite the bankruptcy court order. Our courts were hereof of any basis to exercise *in personam* jurisdiction over Copal—much less the Arbitration Association—in this case until the proceedings in Japan had terminated and Copal filed its claim here.

Section 2(a) of the Bankruptcy Act (11 U.S.C. § 11(a)) codifies a fundamental rule for all American courts requiring some basis of jurisdiction over the person of the party the court seeks to bind. The provision reads:

"The Courts of the United States heretofore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title . . . to . . . (15) Make such orders, issue such process . . . as may be necessary for the enforcement of the provisions of this title . . ." 11 U.S.C. § 11(a)(15).

(Emphasis added.)

[1] By providing, under section 311 of the Bankruptcy Act (11 U.S.C. § 711), that the court in which a bankruptcy petition is filed shall have "exclusive jurisdiction of the debtor and his property, wherever located", Congress indicated that a Chapter XI court would have the power to send its process beyond the boundaries of its district to protect its jurisdiction. See *Continental Illinois National Bank & Trust Co. v.*

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"SEAGULLS ON THE WATER—
SOLAR COURT

R. I. & P. Ry. Co., et al., 294 U.S. 482, 684, 55 S.Ct. 595, 609, 151 L.Ed. 1110 (1935) ("construing the statute 1 57: civil process in one district"); see also in re Continental Realty Corp., 74 F.2d 734, 737-38 (1st Cir.), cert. denied sub. nom. Continental Realty Corp. v. Compton, 294 U.S. 725, 55 S.Ct. 609, 70 L.Ed. 1256 (1935); 8 Collier Bankruptcy, 2,01 at 183-188 (14th ed. 1973) (noting that no authority has construed the power to extend beyond the territorial limits of the United States to control the action of parties and tribunals with the same independent basis of jurisdiction over them. Cf. Advisory Committee's Notes to Bankruptcy Rule 111, eff. October 1, 1973.

2. The Chapter XI Court, though created with nationwide jurisdiction, is still bound in extranational matters by the well established "minimum contacts" principle enunciated in Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1298 (1958). There the Supreme Court held:

However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him."

357 U.S. at 251, 78 S.Ct. at 1238, 2 L.Ed.2d at 1296.

See also Mariash v. Merrill, et al., 499 F.2d 1128, 1141-1143 (2d Cir. 1974); Gensco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1325, 1329 (11th Cir. 1972) (minimum contacts principle applied to extraterritorial service upon foreign defendant under the Securities Exchange Act of 1934). Here, neither the Japanese corporation nor the Japanese Arbitration Association had any contact with the United States. The record shows the minimal contacts essential to the exercise of jurisdiction by the bankruptcy judge.

RECOGNITION OF THE ARBITRAL AWARD

Under Japanese law the award of a final, Federal Rule of Civil Procedure

41.1 and N.Y.C.P.L.R. 4511 permit judicial notice of those Articles of the Japanese Code of Civil Procedure providing for deposits of arbitral awards in Japanese courts.

"Article 799: An award shall contain an entry of the day, month, and year when it was drawn up and arbitrators shall sign and seal thereon.

"2. An exemplification of the award bearing the signatures and seals of the arbitrators shall be served upon the parties and the original thereof shall be deposited with the jurisdictional court together with a certificate of service."

Once the award is deposited with the Japanese court, it is subject to no further confirmation proceedings. At that point, under Article 800, the effect of the award is conclusive.

"Article 800: An (arbitral) award shall have the same effect as a judgment which is final and conclusive between the parties.

Coqual was unable to confirm its award as a judgment in our courts in the face of the bankruptcy court's order which apparently barred any further action against the bankrupt in this country. The Japanese corporation now asks that it be allowed to enforce its Japanese award in this country so that it will be a provable debt for the purposes of bankruptcy court proceedings. Bankruptcy Act (66 Stat.) 5, 11 U.S.C. § 109(a)(5).

In support of its right to enforcement, Coqual invokes two treaties, one bilateral, the other multilateral, to which both the United States and Japan are parties. The bilateral treaty at least has been held to be self-executing. See Oregon-Pacific Forest Products Corp. v. Welsh Pulp Co., 218 F.Supp. 907, 910 (D.C. Oregon 1965) (state law must yield to arbitration provisions of Treaty with Japan); L. Henkin, Foreign Affairs and the Constitution, 157 n. (1972). Under the Treaty with Japan on Friendship, Commerce, and Navigation, conclusive Japanese arbitration awards which are

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not violate our public policy are conclusive in this country as well.

"Awards duly rendered pursuant to any such contracts, which are valid and enforceable under the laws of the place where rendered, shall be deemed conclusive in enforcement proceedings brought before the courts of competent jurisdiction of either Party, and shall be entitled to be declared enforceable by either such courts, except where found contrary to public policy." Treaty with Japan on Friendship, Commerce and Navigation, Art. IV, para. 2, 4 U.S.T. 2963 at 2968, T.I.A.S. 2963 at 7 (April 2, 1953). (Emphasis added.)

Recognition of such foreign arbitral awards are mandated under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. They are treated much like a judgment under the Full Faith and Credit Clause of the United States Constitution.

"Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of the arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards." United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. III, 21 U.S.T. 2517 at 2519, T.I.A.S. 6997 at 3, 330 U.N.T.S. 38 at 40 (Dec. 29, 1970). (Emphasis added.)

The United States acceded to the United Nations Convention more than four years after the contract here in question was signed and shortly after the award was made. Nevertheless, it is likely that the treaty controls enforce-

ment actions commenced after the effective date of the Convention, even if the foreign proceedings and award predated the Convention.

"The important point is that the Convention contains no prospective language and, therefore, should be construed as applying retroactively to arbitration agreements and awards previously existing." Murphy, Convention on Foreign Arbitral Awards, 58 A.B.A.J. 821 (1972).

See, also, Hagan, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Summary Analysis of Recognition, N.Y. Conference, May/June 1958,

25 A.B.A.J. 821 (1972); Akon, American Arbitration Association Arrives in the Age of Aquarius; United States Implements United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 3 Sw.J.L.Rev. 1, 25 (1971); McMahon, Implementation of the UN Convention on Foreign Arbitral Awards in the U.S., 26 Arb.J. (n.s.) 65, 85 (1971); cf., e.g., Island Territory of Curacao v. Solitron Devices, Inc., 489 F.2d 1313 (2d Cir. 1974) (confirming foreign arbitration award).

[6] The two treaties compel us to grant the same finality to the award in our court as it has been allowed in Japanese courts. Since Copal's award has attained finality in Japan, we must accord it the opportunity to attain finality here in the United States.

It may seem curious that an arbitral award from a foreign land should be accorded more respect than its American counterpart. Had Fotochrome been involved in American arbitration proceedings, the Referee's order, we assume for the purposes of this case, would have halted the proceedings or at least prevented the confirmation of the award as a final judgment. In the Matter of Fotochrome, Inc., Bankruptcy Judge's Decision p. 13. The anomaly can be explained by the force of the Supremacy Clause of the Constitution. A treaty, under that clause, is the "supreme" law of the land.

basis for civil damage actions under the Securities Exchange Act of 1934.

"SEAGULLS ON THE WATER—
SOME SHIPS IN A STORM".

Volume 47 F Supp 26 (1974)

It is an expression of the sovereign will speaking with the same authority as a statute.

By the constitution, laws made in pursuance thereof, and treaties made under the authority of the United States, are both declared to be the supreme law of the land, and no paramount authority is given to one over the other.

If the treaty operates by its own force, and relates to a subject within the power of congress, it can be deemed in that particular only the equivalent of a legislative act.

In either case, the last expression of the sovereign will must control." The Chinese Exclusion Case, 130 U.S. 581, 600, 9 S.Ct. 625, 33 L.Ed. 1068 (1889).

See also, e. g., Hamenstein v. Lynham, 100 U.S. 483, 25 L.Ed. 628 (1879); Whitney v. Robertson, 124 U.S. 190, 8 S.Ct. 456, 31 L.Ed. 286 (1887); Cook v. United States, 288 U.S. 102, 33 S.Ct. 205, 27 L.Ed. 611 (1933); Treaty superseding statute, Henkin, Foreign Affairs and the Constitution, 62 Cal.L.Rev. 171 (1974); United States v. Guadalupe, 500 F.2d 297, 75-279 (9th Cir. 1974); common law yields to treaty. Here the 1953 Treaty with Japan and the 1952 United Nations Convention have superseded in small measure the 1953 Bankruptcy law.

It is important to note that even if the framers of the Constitution had failed to include the word "treaty" in the Supremacy Clause, the provisions of the United Nations Convention would still be a part of our law and binding on this court. After being ratified by the Senate, the treaty was implemented as a statute and codified in 28 U.S.C. §§ 201-208 (1970).

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with the statute, 28 U.S.C. § 204.

See, in general, Comment, International Commercial Arbitration, Under the United

ed Nations Convention and the Amended Federal Arbitration Statute, 47 Wash.L.R. 441 (1972); McMahon, Implementation of the UN Convention on Foreign Arbitral Awards in the U. S., 26 Ariz.J. 10, 8, 165 (1971).

This case is not without irony. The treaties force us to remove the factor of alienage in determining the recognition of arbitral awards; an award can be no less final for its Japanese origins. But, in terms of injunctive power the common law factor of alienage remains. It is because the Referee had no jurisdictional authority to enjoin Copal, a Japanese corporation, or the Japan Commercial Arbitration Association in a foreign land that the award became final and binding under Japanese law and therefore entitled to be final and binding under our own. Copal thus benefits both from the treaties' removal of alienage and from the common law's insistence upon it.

We recognize that this result might somewhat disturb the draftsmen of the Bankruptcy Act. Upon a petition for bankruptcy they would have expected the court to summon all the creditors of the bankrupt to press their claims at one time and place. However, we cannot say that the result does not have some support in policy. Given the hazards of international trade, such as currency fluctuations and governmental shifts, some stability of expectation in the resolution of disputes through arbitration to protect against the uncertainties of foreign litigation seems desirable. Support for this policy comes from many quarters including the American Bar Association, the American Arbitration Association and the United States Council of the International Chamber of Commerce. See, e.g., comment, United Nations Foreign Arbitral Awards Convention, United States Accession, 23 Cal.West Int'l.L.J. 67, 75-6, 35 (1971). Furthermore, the injunctive legislation in 28 U.S.C. §§ 204-208 (1970) indicates that the government of the United States has committed itself to the settlement of international commercial disputes through

"SEAGULLS ON THE WATER—
SOME SHIPS IN A STORM!"
A COMMENT ON VZA V. DREXEL

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Case for civil damage action under the Securities Exchange Act of 1934. The Board sharply divided (six-to-four) Second Cir.

voluntary arbitration. See McMahon, Implementation of the FN Convention on Foreign Arbitral Awards in the U. S., 26 Arbit. n. s. 65, 83 (1941).

International trade is so important to the peace and welfare of the world that our law is justified in assuring other nations' suspicions by the firm enforcement of treaties as they apply. American corporations facing imminently unfavorable arbitrations abroad may not file for Chapter XI of bankruptcy here to avoid final and unreviewable arbitration awards.

Fotochrome insisted for its contract with Copal and one of the terms bargained for was a provision for arbitration of disputes in Japan. Fotochrome can only be relieved of its contractual burden at the expense of certainty in international commerce. As the court recently noted:

"The expansion of American business and industry will hardly be encouraged if, notwithstanding our contracts, we insist on a universal concept that all disputes must be resolved under our law and in our courts." M. S. Bremer, et al. v. Zapata Off. Shores, Inc., 196 U.S. 129, 132 (1904), 1912, 21 U.S. 21 (1917).

International commerce has grown too large and the world too small for American courts to disregard the law of nations, even in favor of the Bankruptcy Act.

IV. CONFIRMATION OF THE AWARD

[7] The arbitral award is entitled to confirmation proceedings where it will be tested under rules designed to assure fairness to the American litigant. The standards for recognizing foreign awards as final under federal law are set forth in Article V of the United Nations Convention (9 U.S.C. § 207 (1979)) in terms much like those used in testing domestic arbitral awards. They read as follows:

"1. Recognition and enforcement of the award may be refused, at the re-

quest of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in Article I were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(1a) The subject matter of the difference is not capable of settlement by

arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country."

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. V, 21 U.S.C. 2017 at 2520, T.I.A.S. 6997 at 4, 301 N.T.S. 38 at 40, 42.

Since the arbitral award has attained the status of a judgment in Japan, it may be recognized pursuant to New York's statute on recognition of foreign country money judgments. N.Y.C.P.L. § 33 (a)(1) (1969). Cf., e. g., Island Territory of Curacao v. Solitron Dynamics, Inc., 489 F.2d 1317, 1319 (2d Cir. 1973). But, cf. 9 U.S.C. § 206 (removal from state court of action relating to convention). New York's U.P.L.R. §604 sets out the grounds for non-recognition in terms designed to ensure due process:

"a. No recognition. A foreign country judgment is not conclusive if:

1. the judgment was rendered under a system which does not provide for impartial tribunals or procedures compatible with the requirements of the process of law;

2. the foreign court did not have personal jurisdiction over the defendant.

(b) Other grounds for non-recognition. A foreign country judgment need not be recognized if:

1. the foreign court did not have jurisdiction over the subject matter;

2. the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

3. the judgment was obtained by fraud;

4. the cause of action on which the judgment is based is repugnant to the public policy of this state;

5. the judgment conflicts with another final and conclusive judgment;

6. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

7. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action." See, e. g., B. Kulzer, Study, The Uniform Foreign Money-Judgments Recognition Act, N.Y.Jud.Conf. 13th Ann.Rep. 194, 210-218 (1968).

Long before these treaties and statutes were enacted American courts had begun to recognize foreign arbitral awards as well as foreign judgments on a regular basis, subject of course to considerations of fairness and public policy. The leading case of *Hilton v. Guyot*, 159 U.S. 113, 40 S.Ct. 139, 40 L.Ed. 95 (1895), stated the standards of recognition of foreign judgments eighty years ago:

"There has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting, or fraud in procuring the judgment" 159 U.S. at 202, 16 S.Ct. at 158, 40 L.Ed. at 122.

See, *emitt*, International Res Judicata and Collateral Estoppel in the United States, 7 U.C.L.A.L.Rev. 41, 46-47 (1962). The standards for recognition of arbitral awards under the treaties and statutes are almost a codification of the principles used to protect American litigants from recognition of unfairly obtained foreign judgments and arbitral awards in the past. Compare Restatement Second Conflict of Laws § 38

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(foreign judgments), 229 (foreign arbitral awards) (1971).

Italy is now free to seek recognition of its award as an American judgment. Polychrome may prove grounds for non-recognition. If Copal emerges as the victor, issues in the underlying dispute will be *res judicata* and the amount awarded will be a provable debt for the purposes of the Bankruptcy Act.

V. CONCLUSION

While our decision upholds the international obligations of the United States, it may place American creditors at a disadvantage. The difficulty arises from unresolved inconsistencies between treaty law and preexisting national law. House Report No. 91-1181, 1970 Code, Cong. and Admin. News, 1970, 115, 116 ("American delegation felt that certain provisions were in conflict with some of our domestic laws."); *Comment*, United Nations Foreign Arbitral Awards Convention: United States Accession, 2 *Calif. West. Int. L.J.* 101 (1971). Here we find that the latter take precedence. The decision of the bankruptcy judge is reversed.

So ordered.



Elijah Ephraim JHRAD, Petitioner,

v.

Thomas E. FERRANDINA, United States Marshal, Southern District of New York, Respondent.

Nos. 72 Civ. 4026, 73 Civ. 1630.

United States District Court,
S. D. New York.

Jan. 30, 1974.

International extradition proceeding. Following denial of two applications for writs of habeas corpus, 355 F. Supp. 1155, 362 F.Supp. 1057, and re-

mand, 1-6 F.2d 112, for findings on issue of intent with which the alleged fugitive left the demanding country, counsel for the alleged fugitive requests order to show cause, seeking reversal of the taking of any further evidence or, in the alternative, seeking additional discovery. The District Court, Kenneth Thomas Duffy, J., held that fact that the Court of Appeals remanded without explicitly addressing the issue of taking additional evidence did not constitute a prohibition against taking such evidence, that taking of additional evidence was appropriate under the "wide latitude" standard applicable in such proceedings, and that alleged fugitive was not entitled to discovery of such scope as would transform hearing into a full trial on the merits despite contention that procedural rules and guidelines of federal habeas corpus should be employed on ground that only issue involved was a disputed issue of fact.

Requests denied.

1. Extradition \Rightarrow 11(c)

Fact that the Court of Appeals in international extradition proceeding remanded for findings on issue of intent with which the alleged fugitive left the demanding country without explicitly addressing itself to the need for taking additional evidence did not constitute a prohibition against taking of such evidence, and taking of further evidence was appropriate under the "wide latitude" standard applicable in such proceedings. 18 U.S.C.A. § 3184.

2. Extradition \Rightarrow 11(d)

In international extradition proceeding, the alleged fugitive was not entitled to discovery of such scope as would transform the hearing into a full trial on the merits, despite contention that procedural rules and guidelines of federal habeas corpus should be applied on ground that a disputed issue of fact was presented with respect to intent with which the alleged fugitive left the demanding country.