

The Sao Vicente, 260 U.S. 151 (1922)

Opinions

Syllabus **Case**

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U.S. Supreme Court

The Sao Vicente, 260 U.S. 151 (1922)

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Nos. 279-283

Argued October 3, 1922

Decided November 13, 1922

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

Syllabus

A consul general is not competent, merely by virtue of his office, to appear and claim immunity on behalf of his government and its property in admiralty proceedings. P. 260 U. S. 154.

Certiorari to review 281 F. 111 and 115 dismissed.

These were writs of certiorari, issued upon petition of the Consul General of Portugal for the purpose of bringing up admiralty proceedings described in the opinion. The writs were directed to decrees of the circuit court

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of appeals which dismissed for want of jurisdiction appeals from the decrees of the district court.

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MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The above-entitled causes are here on writs of certiorari issued upon the sole petition of George S. Duarte, who described himself therein as the duly accredited consul general of the Republic of Portugal in the United States of America, without more. The petition sets out the proceedings below, declares

"the Portuguese government does not intend to avoid its just obligations to citizens of the United States, but it claims that, if there is any question between it and such citizens, they are matters for adjudication by the diplomatic departments of the two governments, and it does object to the violation of its sovereignty, contrary to all rules of international law and international comity,"

and alleges, as one reason for granting the writ, that "an important question of international law and comity is involved." There is nothing to show that the consul general had authority or right to take any action concerning the matters in question except as may be inferred from his official position. Considering the possible international aspect of the controversy, we granted the petition, and appropriate writs issued. Counsel have been heard, both orally and by briefs.

Nos. 279, 280, and 282 are separate proceedings *in rem* commenced in the United States District Court, Southern District of New York, against the *Sao Vicente* and the *Murmugao* to recover for materials, supplies, work, and labor furnished to them. In each cause, after arrest of the steamer, the Transportes Maritimos do Estado, intervening for its interest, appeared before the court and made claim, averring that it was in possession when the process issued and was the true and *bona fide* owner. It asked

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to defend accordingly, gave bond for costs and value, and secured the vessel's discharge. Thereafter the steamer answered, denying the allegations of the libel, and, as a distinct and complete defense, alleged that it was owned and operated by the Transportes Maritimos do Estado, a department of the government of Portugal not subject to suits in courts of the United States. This special defense was declared insufficient, and final decrees were duly entered. Appeals to the circuit court of appeals were dismissed (*The Carlo Poma*, 255 U. S. 219), that court being of opinion that the only controverted point was the jurisdiction of the trial court. 281 F. 111 and 115.

Nos. 281 and 283 are separate proceedings *in personam*, commenced in the same district court against Transportes Maritimos do Estado, alleged to be a foreign corporation organized under the laws of the Republic of Portugal, to recover for services, goods, wares, and merchandise furnished to its steamers, the *Cunene* and the *Santo Antao*. The *Murmugao* was attached. The respondents answered, made general denials, and, as a distinct and complete defense, alleged the *Cunene* and the *Santo Antao* were owned and operated by a department of the sovereign and operated by a department of the sovereign government of Portugal, and that the court was therefore without jurisdiction. This defense was held insufficient. Appeals to the circuit court of appeals were dismissed upon the view that they involved only the question of jurisdiction.

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We are of the opinion that the writs of certiorari were improvidently awarded, and must be dismissed. The consul general was not party to any of the proceedings below, and is not competent, merely by virtue of his office, to appear here for his government and claim immunity from process in the manner attempted. In *The Anne*, 3 Wheat. 435, 16 U. S. 445, a prize proceeding for condemnation, a claim was interposed in behalf of the Spanish consul for restitution of the vessel because of asserted violation of the

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neutral territory of Spain. Speaking through Mr. Justice Story, this Court said:

"And this brings us to the second question in the cause, and that is whether it was competent for the Spanish counsel, merely by virtue of his office, and without the special authority of his government, to interpose a claim in this case for the assertion of the violated rights of his sovereign. We are of opinion, that his office confers on him no such legal competency. A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes. He has an undoubted right to interpose claims for the restitution of property belonging to the subjects of his own country, but he is not considered as a minister, or diplomatic agent of his sovereign, entrusted, by virtue of his office, with authority to represent him in his negotiations with foreign states, or to vindicate his prerogatives. There is no doubt that his sovereign may specially entrust him with such authority, but in such case his diplomatic character is superadded to his ordinary powers, and ought to be recognized by the government within whose dominions he assumes to exercise it. There is no suggestion or proof of any such delegation of special authority in this case, and therefore we consider this claim as asserted by an incompetent person, and on that ground it ought to be dismissed."

And see United States v. Wong Kim Ark, 169 U. S. 649, 169 U. S. 678; *In Re Baiz*, 135 U. S. 403, 135 U. S. 424; *Ex Parte Muir*, 254 U. S. 522, 254 U. S. 532; *The Pesaro*, 255 U. S. 216, 255 U. S. 218.

Dismissed.

* The docket titles of these cases are: No. 279, *Transportes Maritimos do Estado, Claimant of S.S. "Sao Vicente" v. Tietjen & Lang Drydock Company*; No. 280, *Transportes Maritimos do Estado, Claimant of S.S. "Murmugao" v. Maxwell Rose, doing business as Battery Operating Company and Whitehall Stevedoring Company*; No. 281, *Transportes Maritimos do Estado (in personam) v. Maxwell Rose, doing business as Battery Operating Company and Whitehall Stevedoring Company*; No. 282, *Transportes Maritimos do Estado, Claimant of S.S. "Murmugao" v. Thomas De Simone*; No. 283, *Transportes Maritimos do Estado (in personam) v. Thomas De Simone*.

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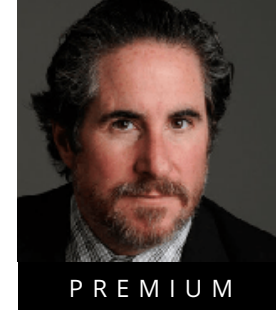
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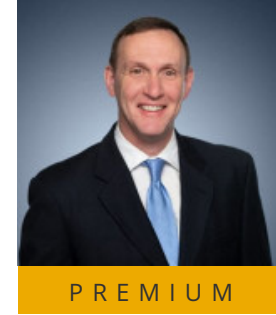


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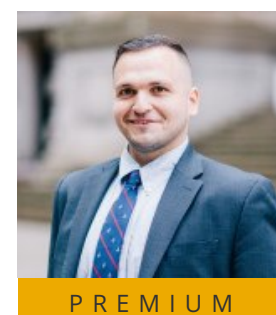


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