Kulangsu, it would seem that any nation, whether or not a party to the Nine Power Treaty or Settlement agreement, would have this right under the general law and practice of nations, but that one nation has no superior rights in this respect above another. The Land Regulations do not cover the question of enforcing public order except through the Settlement police under control of the Council.

As to a change in the control of the administration of the Settlement, this is governed by the provision above cited for the amendment of the Land Regulations in agreement with all of the parties thereto. This appears to be the only method by which the Japanese can properly obtain fundamental modifications in the present administration of Kulangsu.

L. H. WOOLSEY

CONCERNING THE NAVEMAR

The vicissitudes of the Spanish steamship *Navemar* between the libel of the vessel on December 7, 1936, and its final release in April, 1939, have not produced a *cause célèbre;* but they have done more than furnish a choice bone of contention for certain proctors in admiralty, for they have inspired a series of adjudications resulting in some interesting and important judicial conclusions.[1] The relevant facts as stated by Judge Augustus N. Hand in the judgment of the Circuit Court of Appeals, Second Circuit, on March 6, 1939, are given below.[2]

[1] See *The Navemar*, 17 F. Supp. 495, 647, 18 F. Supp. 153, 90 F. (2d) 673; Compañía Española de Navegación Maritima *v. The Navemar* (*certiori* granted), 302 U. S. 669; same case, 303 U. S. 68, this JOURNAL, Vol. 32 (1938), p. 381. *The Navemar*, 24 F. Supp. 495, 102 F. (2d) 444. See also New York Times, April 23, 1939, p. 22.

[2] "The libellant, a Spanish corporation, filed a possessory libel against the steamship *Navemar in rem*, and against five members of the crew of that vessel *in personam*, alleging that libellant had been wrongfully deprived of possession of the vessel by those members of her crew. A decree by default was entered on December 14, 1936. The Consul General of Spain in New York sought on behalf of the Spanish Ambassador to open the default and vacate the decree and filed a suggestion alleging that the court had no jurisdiction because the *Navemar* was the property of the Republic of Spain by virtue of a decree of attachment appropriating the vessel to the public use and was then in the possession of the Spanish Government, and asking that the court direct delivery of her to the Spanish Consul General of New York.

"The District Court 'allowed a full hearing upon the suggestion and upon reply affidavits submitted by libellant in the course of which there was opportunity for the parties to present proof of all the relevant facts.' Compañía Española *v. Navemar*, 303 U. S. 68, 72, 58 S.Ct. 432, 434, 82 L. Ed. 667. The court found that the *Navemar* was never in the possession of the Spanish Government prior to her seizure by the five members of her crew in New York Harbor and likewise that she was not a vessel in the public service of Spain and accordingly denied the petition to intervene. Upon the appeal, we reversed its order and held that the suggestion of the Ambassador was binding on the court and that the evidence had established a possession of the *Navemar* by the Spanish Government which rendered her immune from seizure in the possessory action. *The Navemar*, 2 Cir., 90 F. 2d 673. The Supreme Court granted a writ of *certiorari*, reversed the order of this court and affirmed the order and findings of the District Court holding that possession of the *Navemar* was not in the Spanish

In this case the Spanish Government, in endeavoring to intervene as it did by its Ambassador at Washington, acting through the agency of the Consul General at New York, and without the aid of the Department of State,[3] sought in reality to do two things with respect to a Spanish merchant vessel that had been libeled and awarded by default decree to the libellant. The first was to secure judicial recognition of the claim that the ship was a public vessel and entitled as such to immunity from the local jurisdiction. The second was to gain judicial respect for the Spanish governmental title (acquired before the ship had reached American waters) and right to possession of the vessel.[4]

With respect to the first contention, the District Court concluded that the Spanish Government did not appear to have such possession as was deemed necessary to establish such a connection between that government and the ship as was requisite in order to sustain the contention that it should be dealt with as a public vessel entitled to the immunity to be accorded one.[5] With this conclusion, which was not shared by the Circuit Court of Appeals,[6] the Supreme Court of the United States seemingly agreed. Declared that tribunal in this connection:

Government, but permitted the Ambassador to intervene for the purpose of asserting the Spanish Government's ownership and right to possession of the vessel. *The Navemar*, 303 U. S. 68, 58 S. Ct. 432, 436, 82 L. Ed. 667.

"Thereafter, in conformity with the decision of the Supreme Court, the Spanish Ambassador filed a new intervening petition in which he alleged that by virtue of a decree promulgated by the President of the Republic of Spain, ownership and the right to possession of the *Navemar* was vested in that Republic. The libellant filed an answer denying the allegations of this petition. The issues thus raised came to trial both upon the evidence taken on the former hearing and upon additional proofs adduced at the new trial." (102 F. 2d 444, 445–446.)

[3] "Meanwhile the Department of State had refused to act upon the Spanish Government's claim of possession and ownership of the *Navemar*, had declined to honor the request of the Ambassador that representations be made in the pending suit by the Attorney General of the United States in behalf of the Spanish Government, and had advised the Ambassador that his Government was entitled 'to appear directly before the court in a case of this character.' . . . The Department of State having declined to act, the want of admiralty jurisdiction because of the alleged public status of the vessel and the right of the Spanish Government to demand possession of the vessel as owner if it so elected, were appropriate subjects for judicial inquiry upon proof of the matters alleged." (Compañía Española *v. Navemar*, 303 U. S. 68, 71, 75.)

[4] As the Supreme Court pointed out, in certain earlier cases (*Ex parte* Muir, 254 U. S. 522, and *The Pesaro*, 19 Fed. Cas. No. 11,199) the ambassador of the intervening government had challenged the jurisdiction of the court, "but did not place himself or his government in the attitude of a suitor. Here the application as construed by the trial court was for permission to intervene as a claimant. We think the applicant should be permitted to occupy that position if so advised." (*Id.*, 76.)

[5] See *The Navemar*, 18 F. Supp. 153, 157.

[6] *The Navemar*, 90 F. (2d) 673, 677, where it was said: "Having dedicated the vessel to the public service by subjecting it to its control, the Spanish Government must be regarded as at least in constructive possession of her which, for purposes of immunity, is as efficacious as actual possession asserted through the government's own officers."

> The District Court concluded, rightly we think, that the evidence at hand did not support the claim of the suggestion that the *Navemar* had been in the possession of the Spanish Government. The decree of attachment, without more, did not operate to change the possession which, before the decree, was admittedly in petitioner. To accomplish that result, since the decree was *in invitum*, actual possession by some act of physical dominion or control in behalf of the Spanish Government, was needful, *The Davis*, 10 Wall. 15, 21; Long *v. The Tampico*, 16 Fed. 491, 493, 494; *The Attualita, supra; The Carlo Poma*, 259 Fed. 369, 370, reversed on other grounds, 255 U. S. 219, or at least some recognition on the part of the ship's officers that they were controlling the vessel and crew in behalf of their government. Both were lacking, as was support for any contention that the vessel was in fact employed in public service. See Long *v. The Tampico, supra*, 493, 494; cf. Berizzi Bros. Co. *v. The Pesaro, supra.*
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> The District Court rightly declined to treat the suggestion as conclusive or sufficient as proof to require the court to relinquish its jurisdiction.[7]

It is significant that the Supreme Court here acknowledged that recognition on the part of the ship's officers that they were controlling the vessel and crew in behalf of their government might have sufficed (had such a condition been judicially acknowledged to have existed in consequence of the evidence adduced) to create such a connection between the vessel and that government or the state which it professed to represent, as to warrant the inference that the ship was a public vessel and entitled to the immunities of such a craft. The court did, however, make it clear that the filed suggestion, as to the status of a vessel, though sufficient as a statement of the contentions made, is not proof of its allegations. To quote the words of Mr. Justice Stone: "This court has explicitly declined to give such a suggestion the force of proof or the status of a like suggestion coming from the executive department of our government."[8] In view of its appraisal of the evidence in the instant case, that tribunal "referred back only the question of title and right to possession for determination at the new trial, and not the question whether the *Navemar* was immune from judicial process."[9] In relation to the latter question, the series of adjudications respecting the *Navemar*, embracing the decision of the Supreme Court, did not shed fresh light on what the requirements of international law may be.

The sole matter to be determined upon the final appeal to the Circuit

[7] Compañía Española *v. Navemar*, 303 U. S. 68, 74–76. Declared the Circuit Court of Appeals, March 6, 1939: "We cannot see that the testimony taken at the second trial was sufficiently different from the former proof to establish possession of the *Navemar* in the Spanish Republic. If, as the Supreme Court held, that government did not acquire possession of the ship at Buenos Aires, nothing occurred thereafter which changed the situation." (*The Navemar*, 102 F. 2d 444, 446.)

[8] Compañía Española *v. Navemar*, 303 U. S. 68, 75, where the court cited *Ex parte* Muir, 254 U. S. 522; *The Pesaro*, 19 Fed. Cas. No. 11,199; and Berizzi Bros. Co. *v. The Pesaro*, 271 U. S. 562.

[9] *The Navemar*, 102 F. 2d 444, 446.

Court of Appeals was whether the Spanish Ambassador had established title in or right to possession of the ship. That tribunal concluded that he had established such title and right to possession, and that his intervening petition should, therefore, prevail.[10] Adverting to a Spanish decree of October 11, 1936, expropriating the vessel (and which was published in the *Gaceta de Madrid*) while the *Navemar* was in the port of Buenos Aires, the court expressed the opinion that the effect of the decree was to transfer the title and right to possession of the ship to the Spanish Government.[11] It was declared to be unnecessary to say that the decree effected an expropriation of the vessel while in foreign territorial waters at Buenos Aires, even though it was promulgated and notice thereof given to the master when the ship was at that port. It was added that, even if the decree might not be effective while the *Navemar* was at Buenos Aires, it was, nevertheless, an instrumentality of expropriation that would become operative upon the vessel as soon as it reached the high seas. Responding to the argument that an American tribunal should not enforce a right of ownership created by the decree when the right was created as a method to further the governmental interest of Spain, and when the decree purported to take property without compensation in violation of American public policy, it was said that there was no proof in the instant case that the owner was to receive no compensation for his vessel, and that the decree itself provided for assumption by the Spanish Republic of the obligation of the owner to creditors.[12] It was noted also that the Spanish Constitution appeared to require payment of compensation in a case like the one before the court, and it was presumed that its provisions would be regarded.[13] "In addition to this," the court added, "the *Navemar* was not within the jurisdiction of the New York courts when the decree took effect."[14]

It was declared that even if compensation were not to be made, "we should still recognize the acts of a foreign state affecting property within its jurisdiction"; and that in the present case there was no enforcing of the claim of another state to property beyond its jurisdiction, as would have been the case if the subject-matter had been a chattel that was within the State of New York. The situation resembled, it was said, that of the appropriation of tangibles within the confines of Spain which afterwards reached our shores, adding that "there we should recognize the title acquired under the laws of

[10] 102 F. 2d 444, 446.

[11] *Id.*, 448, where the court invoked and quoted the decision of the Supreme Court in Crapo *v.* Kelly, 16 Wall. 610, 631.

[12] The concurring opinion of Mr. Justice Stone in the case of United States *v.* Belmont, 301 U. S. 324, 334, 335, was referred to as implying that there was no policy in the State of New York against enforcing an expropriation decree merely because it furthered the governmental interest of a foreign state. It was also said: "He adds, however, that New York should be free to enforce a local policy subordinating the claim of a foreign government to local suitors. Accordingly the decree might be disregarded if it involved taking property within the State of New York without compensation." (*Id.*, 449.) [13] *Id.* [14] *Id.*

the foreign state."[15] It was declared that in either situation the decree of the foreign state is recognized as passing title because jurisdiction is held to exist. Accordingly, it was concluded that "when the Spanish decree became effective as to the *Navemar* she was on the high seas and recognition of it involved no conflict with our laws."[16] For these reasons the decree of the court below was reversed, the libel dismissed, and the *Navemar* ordered released from arrest and attachment and delivered to the Acting Consul General of Spain at New York pursuant to the prayer of the Spanish Ambassador.[17] The writer offers no criticism of the foregoing conclusions of the Circuit Court of Appeals as set forth in Judge Augustus N. Hand's opinion.

It should be observed, however, that with the success of the Franco Government in Spain and its recognition by the United States as the government of that country, the new régime in control thereof, not seeking to benefit by the expropriatory law of its predecessor, the Azaña régime, and seemingly not desiring "continuation of the action," made possible the release of the ship on April 22, 1939.[18]

CHARLES CHENEY HYDE

CITIZENSHIP BY BIRTH IN THE UNITED STATES NOT LOST THROUGH NATURALIZATION ABROAD OF MINOR'S FATHER

The United States Supreme Court has recently decided an important question of the law of citizenship [1] which has troubled the Departments of State, Labor, and Justice for several years and caused uncertainty in the courts.[2] The question was whether an American-born minor who is taken abroad by his parent who then himself becomes naturalized abroad, thereby loses his American citizenship, either under the Act of 1907 or under a naturalization treaty of the United States with the parent's new State or otherwise. Down to 1929 there seems to have been no doubt in the Department of State that such a minor child, taken abroad at an early age, did not lose his American citizenship unless, by some voluntary act of his own after reaching majority, he manifested his election not to claim his American citizenship, an election most commonly evidenced by a failure to return to the United States for permanent residence.[3] No statute establishes this right of election of native-born citizens; but as election is possible to the foreign-born children of American citizens under Section 1993 of the Revised Statutes and Section 6

[15] 102 F. 2d 449. [16] *Id.*, 450. [17] *Id.* [18] New York Times, April 23, 1939, p. 22.

[1] Perkins, Secretary of Labor, *v.* Elg; Elg *v.* Perkins, Nos. 454, 455, decided May 29, 1939, 59 Sup. Ct. 884.

[2] *Cf.* opinions of Judge Fee in *In re* Reid, United States District Court, 6 Fed. Supp. 800 (1934), and of Judge Wilber in the C. C. A., 73 F. (2d) 153 (1934). See also editorial in this JOURNAL, Vol. 30 (1936), p. 694.

[3] The practice of the Department of State is summarized in the circular instruction of Secretary of State Hughes, Nov. 24, 1923, Compilation of Certain Departmental Circulars, relating to citizenship, registration of American citizens, issuance of passports, etc., 1925, pp. 118–121.