Suits by Foreign States.—The privilege of a recognized foreign state to sue in the courts of another state upon the principle of comity is recognized by both international law and American constitutional law.[1141] To deny a sovereign this privilege "would manifest a want of comity and friendly feeling."[1142] Although national sovereignty is continuous, a suit in behalf of a national sovereign can be maintained in the courts of the United States only by a government which has been recognized by the political branches of our own government as the authorized government of the foreign state.[1143] As the responsible agency for the conduct of foreign affairs, the State Department is the normal means of suggesting to the courts that a sovereign be granted immunity from a particular suit.[1144] Once a foreign government avails itself of the privilege of suing in the courts of the United States, it subjects itself to the procedure and rules of decision governing those courts and accepts whatever liabilities the court may decide to be a reasonable incident of bringing the suit.[1145] The rule that a foreign nation instituting a suit in a federal district court cannot invoke sovereign immunity as a defense to a counterclaim growing out of the same transaction has been extended to deny a claim of immunity as a defense to a counterclaim extrinsic to the subject matter of the suit but limited to the amount of the sovereign's claim.[1146] Moreover, certain of the benefits extending to a domestic sovereign do not extend to a foreign sovereign suing in the courts of the United States. A foreign state does not receive the benefit of the rule which exempts the United States and its member states from the operation of the statute of limitations, because

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[1141] *The Sapphire*, 78 U.S. (11 Wall.) 164, 167 (1871).

[1142] 78 U.S. at 167. This case also held that a change in the person of the sovereign does not affect the continuity or rights of national sovereignty, including the right to bring suit or to continue one that has been brought.

[1143] Guaranty Trust Co. v. United States, 304 U.S. 126, 137 (1938), citing Jones v. United States, 137 U.S. 202, 212 (1890); *Matter of Lehigh Valley R.R.*, 265 U.S. 573 (1924). Whether a government is to be regarded as the legal representative of a foreign state is, of course, a political question.

[1144] *Ex parte* Peru, 318 U.S. 578, 589 (1943), distinguishing Compania Espanola v. The Navemar, 303 U.S. 68 (1938), which held that where the Executive Department neither recognizes nor disallows the claim of immunity, the court is free to examine that question for itself. Under the latter circumstances, however, a claim that a foreign vessel is a public ship and immune from suit must be substantiated to the satisfaction of the federal court.

[1145] Guaranty Trust Co. v. United States, 304 U.S. 126, 134 (1938). Among other benefits which the Court cited as not extending to foreign states as litigant included exemption from costs and from giving discovery. Decisions were also cited to the effect that a sovereign plaintiff "should so far as the thing can be done, be put in the same position as a body corporate."

[1146] National Bank v. Republic of China, 348 U.S. 356, 361 (1955), citing 26 Dept. State Bull. 984 (1952), in which the Department "pronounced broadly against recognizing sovereign immunity for the commercial operations of a foreign government."