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*Feb. 28, Mar. 1 June 11

FLOTA MARITIMA BROWNING de CUBA S. A. (*Plaintiff*) ..... APPELLANT;

AND

THE STEAMSHIP CANADIAN CONQUEROR, THE STEAMSHIP CANADIAN HIGHLANDER, THE STEAMSHIP CANADIAN LEADER, THE STEAMSHIP CANADIAN OBSERVOR, THE STEAMSHIP CANADIAN VICTOR, THE MOTOR-VESSEL CANADIAN CONSTRUCTOR, THE MOTOR-VESSEL CANADIAN CRUISER re-named CUIDAD de DETROIT (*Defendants*)

AND

THE REPUBLIC OF CUBA (*a party interested*) ..... } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Shipping—International law—Vessels in Canadian port sold to Republic of Cuba—Vessels arrested on behalf of private suitor—Whether doctrine of sovereign immunity extends to protect vessels from seizure.

The plaintiff company was incorporated in Cuba in 1958 for the taking over and operation of ocean-going ships owned by an autonomous Cuban banking institution B. On August 19, 1958, B purchased the defendant ships, then lying in the Port of Halifax, and on the same day entered into a lease-purchase agreement with the plaintiff which provided for the operation of the ships by the latter with an option to purchase. On October 30, 1958, the plaintiff cabled B alleging certain breaches of the terms of the agreement and declaring it to be "a nullity in its entirety" although reserving to itself the right to take such action as might be deemed appropriate. On June 9, 1959, B sold the ships to the Republic of Cuba.

The plaintiff on August 4, 1960, instituted proceedings *in rem* in the Nova Scotia Admiralty District by a writ directed to "the owner and all others interested in the defendant vessels". On the same day the defendant ships were arrested at Halifax pursuant to a warrant of arrest granted on the application of the plaintiff. The Republic of Cuba as the then owner of the ships entered an appearance under protest on August 11, 1960, raising the ground that the Court had no jurisdiction, and this was followed by a notice of motion to set aside the writ of summons, the warrant for arrest and the service thereof on the grounds the ships were public national property of and in possession of the Republic which could not be impleaded; and further that by the agreement relating to the use and hire of the ships the plaintiff expressly submitted itself and all questions relating to the agreement to the jurisdiction of the Cuban Courts. Pottier D.J.A. dismissed the application, but an appeal from this judgment was allowed in the Exchequer Court. The plaintiff then appealed to this Court.

*PRESENT: Taschereau, Locke, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

Held: The appeal should be dismissed.

Per Taschereau, Fauteux, Abbott, Martland and Ritchie JJ.: The ships in question were "public ships" owned by and in the possession of a foreign sovereign state and were, for this reason, immune from arrest in the Exchequer Court. Although the ships might ultimately be used by Cuba as trading or passenger ships, there was no evidence as to the use which they were destined, and the Court was not in a position to say that these ships were going to be used for ordinary trading purposes. The defendant ships were to be treated as "the property of a foreign state devoted to public use in the traditional sense", and the Exchequer Court was, therefore, without jurisdiction to entertain this action. *The Parlement Belge* (1880), 5 P.D. 197, *The Tervaete,* [1922] P. 259, *The Porto Alexandre,* [1920] P. 30, *Reference re Powers of the City of Ottawa and the Village of Rockcliffe Park to Levy Rates on Foreign Legations, etc.,* [1943] S.C.R. 208, *Rahimtoola v. Nizam of Hyderabad,* [1958] A.C. 379, *Sultan of Johore v. Abubakar Turku Aris Bendahar,* [1952] A.C. 318, *Thomas White v. The Ship Frank Dale,* [1946] Ex. C.R. 555, referred to; *Compania Naviera Vascongada v. S.S. Cristina,* [1938] A.C. 485, discussed.

Per Locke and Judson JJ.: The vessels as of the time of the issue of the writ and their seizure on August 4, 1960, were the property of the Republic of Cuba, a sovereign state recognized by Canada. The Republic was in possession and control of the ships on that date. In the circumstances, the two propositions of international law referred to in *Compania Naviera Vascongado v. S.S. Cristina,* [1938] A.C. 485 at p. 490, were applicable: (i) the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages; (ii) They will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control.

APPEAL from a judgment of Cameron J. of the Exchequer Court of Canada[1], allowing an appeal from a judgment of the District Judge in Admiralty for the Nova Scotia Admiralty District. Appeal dismissed.

D. A. Kerr and *G. S. Black,* for the plaintiff, appellant.

Donald McInnes, Q.C., and *J. H. Dickey, Q.C.,* for the respondent.

The judgment of Taschereau, Fauteux, Abbott, Martland and Ritchie JJ. was delivered by

RITCHIE J.:—This is an appeal from a judgment of Cameron J. of the Exchequer Court[1], allowing an appeal from a judgment of Pottier J., District Judge in Admiralty for the Nova Scotia Admiralty District, and ordering that

[1] [1962] Ex. C.R. 1.

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the writ and warrant of arrest in this action and the service thereof be set aside on the ground that the Court was without jurisdiction to entertain the action.

The appellant company was incorporated in Cuba in 1958 for the taking over and operation of ocean-going ships owned by an autonomous Cuban banking institution named Banco Cubano del Comercio Exterior (hereinafter called "Banco"), one of the purposes of which was to promote Cuban trade generally.

On August 19, 1958, Banco purchased the seven ships which are the defendants in this action from Canadian National (West Indies) Steamships Limited and on the same day entered into a lease-purchase agreement providing for their operation by the appellant under the usual demise charter terms together with an option entitling the appellant to convert the contract to one of purchase and sale and to apply all rental and charter hire payments theretofore made to the purchase price of each vessel. On October 30, 1958, however, the appellant cabled Banco alleging certain breaches of the terms of the agreement and declaring it to be "a nullity in its entirety" although reserving to itself the right to take such action as might be deemed appropriate.

There is evidence in the material before us that the defendant vessels became the property of the Republic of Cuba on June 9, 1959, and for the purposes of this appeal the appellant admits that they have since that date

> . . . been owned by various agencies controlled by the Cuban Government, and that Flota has taken no part in the operation of the said vessels . . . .

In fact it appears from the affidavit of John Thompson Campbell, the accountant of G. T. R. Campbell & Company, Marine Surveyors and Consultants at Montreal, that since June 8, 1959, the latter company

> . . . has supervised the said ships and has submitted its reports and accounts to the Government of the Republic of Cuba represented in this behalf by the Oficina de Fomento Maritimo a division of the Department of Defence and subsequently by the Departmento de Fomento Maritimo a division of the Ministry of Revolutionary Armed Forces, Republic of Cuba.

It was not until August 4, 1960, more than a year after Banco had transferred the ships to the Republic of Cuba, that these proceedings *in rem* were commenced against the defendant ships in the Nova Scotia Admiralty District of

the Exchequer Court of Canada. The writ was directed to "the owner and all others interested in the defendant vessels" and it bore the following endorsement:

> The Plaintiff claims against the Defendant Vessels the sum of One Million Five Hundred Thousand Dollars ($1,500,000.00) for injury, loss and damage sustained by the Plaintiff by reason of the breach of a Lease-Purchase Agreement (being an Agreement relating to the use and hire of ships and relating to the Defendant Vessels and others) dated on or about the 19th day of August, A.D., 1958, and for costs, and the Plaintiff claims to have an account taken.

On the same day the defendant ships were arrested at the Port of Halifax pursuant to a warrant for arrest granted on the application of the appellant. Although the lease-purchase agreement referred to in the endorsement was a contract between Flota and Banco, the Republic of Cuba as the then owner of the ships entered an appearance under protest on August 11, 1960, raising the ground that the Admiralty Court had no jurisdiction to entertain the action, and this was followed on August 17 by notice of motion to set aside the writ of summons, the warrant for arrest and the service thereof on the following grounds:

(*a*) That the endorsement of the Writ of Summons herein discloses no cause of action over which this Honourable Court has jurisdiction.

(*b*) That this Honourable Court is wholly without jurisdiction to entertain this action.

(*c*) That the said steamships and motor-vessels Defendants herein were at all material times owned by the Republic of Cuba.

(*d*) That the said steamships and motor-vessels Defendants herein were and are public national property of and in the possession of and public use and service of the Government of the Republic of Cuba at all times relevant to these proceedings, and cannot be impleaded in this action.

(*e*) That the Lease-Purchase Agreement referred to in the Statement of Claim herein as an Agreement relating to the use and hire of ships is an Agreement whereby the Plaintiff expressly submitted itself and all questions relating to the said Agreement to the jurisdiction of the competent Judges and Courts of the Republic of Cuba, renouncing their right to resort to any other jurisdiction by reason of nationality or of domicile or for any other cause whereby this Honourable Court is without jurisdiction, and the Plaintiff herein is estopped from resorting to the jurisdiction of this Honourable Court.

It is to be noted that the writ of summons recites the fact that the agreement is one "relating to the use and hire of ships and relating to the Defendant Vessels and others" and it is upon this allegation that the appellant bases its right to arrest the defendant vessels, alleging that

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the Nova Scotia Admiralty District of the Exchequer Court of Canada has jurisdiction in the premises by reason of the provisions of s. 22(xii)(1) of Schedule A to the *Admiralty Act*, R.S.C. 1952, c. 1, and s. 18(3) and (4) of the said Act, which latter section reads as follows:

(3) Notwithstanding anything in this Act or in the Act mentioned in subsection (2), the Court has jurisdiction to hear and determine

(*a*) any claim

(i) arising out of an agreement relating to the use or hire of a ship,

(ii) relating to the carriage of goods in a ship, or

(iii) in tort in respect of goods carried in a ship,

(*b*) any claim for necessaries supplied to a ship, or

(*c*) any claim for general average contribution.

(4) No action *in rem* in respect of any claim mentioned in paragraph (*a*) of subsection (3) is within the jurisdiction of the Court unless it is shown to the Court that at the time of the institution of the proceedings no owner or part owner of the ship was domiciled in Canada.

In the course of his reasons for judgment in the Exchequer Court, Cameron J. made the following comment:

On these findings of fact, has the Court jurisdiction to entertain this action—a proceeding in which a Cuban Company claims damages for breach of a contract entered into with another Cuban corporation for the operation of the defendant vessels, and when the ownership, possession and control of the vessels has passed from the second corporation to the Republic of Cuba, or at least to one of its departments of state? It is difficult to see how any such claim could succeed if it went to trial since Flota turned over possession of the ships to Banco which had disposed of them by sale before this action was brought. That matter, however, was not one of the grounds on which this motion to set aside the proceedings was based and was not argued before me, and consequently it is unnecessary to consider that matter.

Before this Court Mr. McInnes, on behalf of the respondent, argued that the statutory provision quoted above

. . . is not intended to give jurisdiction with respect to an agreement entered into between two parties relating to ships which at the date of the Writ were owned by and in the possession of a foreign power.

It is appreciated that the main question sought to be determined on this appeal is whether or not the doctrine of sovereign immunity extends to protect the defendant vessels from seizure and I propose to deal with the matter on that basis, but, like Mr. Justice Cameron, it is difficult for me to see how any such claim could succeed if it went to trial unless the *bona fides* of the transfer of the ships to

the Republic of Cuba could be successfully attacked because it appears from the material before this Court that at the time when the action was brought the defendant ships were no longer the property of the owner whose alleged breach of contract is the subject-matter of the Claim and the Republic of Cuba was not a party to the agreement for the use and hire of the ships out of which the claim arose. I am not prepared to hold that the provisions of s. 18(3)(a)(i) of the *Admiralty Act* or s. 22(xii)(1) of its Schedule are effective to create a true maritime lien such as that discussed in *Goodwin Johnson Ltd. v. The Ship (Scow) A. T. & B. No. 28 et al.*[1], attaching from the inception of the claim and travelling with the ships into whosoever's possession they may come, or indeed that those provisions create any kind of a *jus in rem* capable of being asserted against the ships in the hands of a purchaser for value in good faith whose title antedates the writ of summons and the arrest. (See *Goodwin Johnson Ltd. v. The Ship (Scow) A. T. & B. No. 28 et al., supra; Northcote v. Owners of The Henrich Björn*[2]*; The Piève Superiore*[3]*;* and Mayers' Admiralty Law and Practice in Canada, 1st ed., 1916, at p. 25.)

It is, however, not necessary for me to dispose of the present appeal on this ground because, as will hereafter appear, I have formed the opinion that the ships in question are to be treated for the purpose of this appeal as "public ships" owned by and in the possession of a foreign sovereign state and that they are, for this reason, immune from arrest in the Exchequer Court.

It has long been recognized that ships of war engaged in the service of a foreign state are to be treated as floating portions of the flag state and that as such in peacetime they are exempt from the jurisdiction of our Courts, and this principle has been extended to include the ships of a foreign state which are used for the public purposes of that state such as mail-carrying packets (*The Parlement Belge*[4]) and ships carrying coal for public purposes (*The Tervaete*[5]), but the proposition that trading vessels owned and

[1] [1954] S.C.R. 513, 4 D.L.R. 1.
[2] (1886), 11 App. Cas. 270.
[3] (1874), L.R. 5 P.C. 482, 43 L.J. Adm. 20.
[4] (1880), 5 P.D. 197.
[5] [1922] P. 259.

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operated by a foreign sovereign state are equally immune from the jurisdiction of our Courts rests in large measure upon the case of *The Porto Alexandre*[1], decided in the Court of Appeal in England in 1920, and upon the minority opinion of Lord Atkin in *Compania Naviera Vascongado v. S.S. Cristina*[2]. The law as to the immunity from the jurisdiction of our Courts of the property of a foreign sovereign state devoted to the public use of that state is fully discussed in the decisions of this Court in *Reference re Powers of the City of Ottawa and the Village of Rockcliffe Park to Levy Rates on Foreign Legations, etc.*[3], and *Municipality of Saint John et al. v. Fraser-Brace Overseas Corporation et al.*[4].

The material before us clearly indicates that at the time of their arrest the defendant ships, although lying idle in Halifax harbour and being equipped as trading or passenger ships, were nonetheless owned by and in possession of a foreign state and were being supervised by G. T. R. Campbell & Company which company was accounting for such supervision to "a division of the Ministry of Revolutionary Armed Forces, Republic of Cuba". Although the ships might ultimately be used by Cuba as trading or passenger ships, there is no evidence before us as to the use for which they were destined, and, with the greatest respect for the contrary view adopted by Mr. Justice Pottier who had the benefit of viewing the ships, I nevertheless do not feel that we are in a position to say that these ships are going to be used for ordinary trading purposes. All that can be said is that they are available to be used by the Republic of Cuba for any purpose which its government may select, and it seems to me that ships which are at the disposal of a foreign state and are being supervised for the account of a department of government of that state are to be regarded as "public ships of a sovereign state" at least until such time as some decision is made by the sovereign state in question as to the use to which they are to be put.

In the case of *The Cristina, supra,* which has been very fully reviewed in the Courts below, a ship which had been requisitioned by the Government of the Republic of Spain,

[1] [1920] P. 30.
[2] [1938] A.C. 485.
[3] [1943] S.C.R. 208, 2 D.L.R. 481.
[4] [1958] S.C.R. 263, *per* Locke J. at p. 278 *et seq.*

was arrested at Cardiff at the suit of its former owners and the Government of Spain entered a conditional appearance and moved to set aside the writ, the arrest and all subsequent proceedings on the ground that the *Cristina* was then the property of a foreign sovereign state. When the case came before the House of Lords it was the unanimous opinion of the Court that the ship was in the actual possession of the Spanish Republic "for public purposes" and that the Courts of England were without jurisdiction to arrest it. The majority of the judges in the House of Lords placed their judgments squarely on the ground that the ship was being employed for the public purposes of a sovereign state, and Lord Thankerton, Lord Macmillan and Lord Maugham expressly reserved their opinion on the question of whether such immunity from arrest would have attached to the ship if it had been engaged in trade. Lord Atkin, however, in the course of delivering his minority opinion, recited the following two propositions of international law at p. 490:

> The first is that the courts of a country will not implead a foreign sovereign. That is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his person or seek to recover from him specific property or damages. The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his, or of which he is in possession or control.

This statement of the law was approved by Viscount Simonds in *Rahimtoola v. Nizam of Hyderabad*[1], but Lord Atkin went on to say:

> There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for the commercial purposes of the sovereign or to personal private property. In this country it is in my opinion well settled that it applies to both.

These latter observations which were in accord with the decision of the Court of Appeal in *The Porto Alexandre, supra*, were not necessary to Lord Atkin's decision, were not approved by Viscount Simonds and, as will be seen, were expressly disowned by the majority of the Law Lords who sat in *The Cristina, supra.*

The opinions of Lord Thankerton, Lord Macmillan and Lord Maugham have been thoroughly examined in the careful decision in both Courts below and it is unnecessary

[1] [1958] A.C. 379 at p. 394.

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for me to do more than refer to the analysis of the effect of that case made by Viscount Simon, speaking on behalf of the Privy Council, in *Sultan of Johore v. Abubakar Tunku Aris Bendahar*[1], where he said at p. 344:

> An action in rem against a ship impleads persons who are interested in the ship. That is settled law. There is even high authority for the view that such persons are, or may be, directly impleaded by such proceedings (see *The Cristina* case *per* Lord Atkin and *per* Lord Wright). If, however, it had been definitely determined that in no case could a foreign sovereign be impleaded without his consent, there could have been no justification for reserving the case of a sovereign's ship engaged in ordinary commerce—a reservation that was in fact made by the majority of the House of Lords in *The Cristina*. For a sovereign is impleaded by an action in rem against his ship, whether it is engaged in ordinary commerce or is employed for purposes that are more usually distinguished as public. The extent of the impleading is the same in the one case as in the other. Indeed, a great deal of the reasoning of the judgment in *The Parlement Belge*, 5 P.D. 197, would be inexplicable if there could be applied a universal rule without possible exception to the effect that, once the circumstance of a foreign sovereign being impleaded against his will can be established, a proceeding necessarily becomes defective by virtue of that circumstance alone.
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> To say this is merely to disavow an alleged absolute and universal rule. It does nothing to throw doubt on the existence of the general principle.

Mr. Justice Cameron in the present case appears to have adopted Lord Atkin's view as to the doctrine of absolute sovereign immunity, saying:

> While the matter is perhaps not entirely free from doubt, I have come to the conclusion that I should follow the rule as laid down by Lord Atkin in *The Cristina* and which has been cited with approval by the well-known textbook writer to whom I have referred. It was also followed in a Canadian case, that of *Thomas White v. The Ship Frank Dale*, [1946] Ex. C.R. 555, by Sir Joseph Chisholm, D.D.J.A.

When reference is made to the decision of Sir Joseph Chisholm, it is found that that learned judge must have been misled by the head-note in *The Cristina, supra,* at p. 485 because he says:

> In the *Cristina* case the Courts held that the immunity claimed extended and applied to ships engaged in trade and belonging to a foreign sovereign State. The desirability of modifying the accepted rule so far as it concerned trading ships was pointed out by some of their Lordships and particularly by Lord Maugham, but the House was of opinion that in the case the immunity was properly claimed. That seems to be the principle applied in the United States: *Berizzi Bros. Co. v. S.S. Pesaro*, (1926) 271 U.S. 562, and until changed must be accepted by our Court.

The fact that the view so expressed by Sir Joseph Chisholm has not been accepted in this Court appears from what is said by Sir Lyman Duff C.J. in *Reference re Powers of the*

[1] [1952] A.C. 318.

City of Ottawa and the Village of Rockcliffe Park to Levy Rates on Foreign Legations, etc., supra, at p. 221, where he had occasion to say:

Parallel with this rule touching the immunity of legations, there runs the principle of the immunity of the property of a foreign state devoted to public use in the traditional sense. In *The Parlement Belge supra,* it was held that this immunity applies to a ship used by a foreign government in carrying mail. The Supreme Court of the United States has held that it is enjoyed by a ship, the property of a foreign sovereignty and employed by the foreign government for trading purposes. *Berizzi Brothers Co. v. S.S. Pesaro,* (1926) 271 U.S. 562. *It most certainly cannot be said that this is a settled doctrine, in view of the opinions expressed in the Cristina case,* although Lord Atkin, who delivered the judgment of the Judicial Committee in *Chung Chi Cheung v. The King,* [1939] A.C. 160 at p. 175 uses a general phrase:—

> The sovereign himself, his envoy and his property, including his public armed ships, are not to be subjected to legal process. (The italics are mine.)

The implications involved in accepting the opinion which Lord Atkin expressed in *The Cristina, supra,* at p. 490 as "settled doctrine" applicable to state-owned trading ships appear to me to be indicated by the following excerpts from the works of recognized authors on international law.

In Oppenheim's International Law, 8th ed., 1955, vol. I, at p. 273, it is said:

. . . the vast expansion of activities of the modern State in the economic sphere has tended to render unworkable a rule which grants to the State operating as a trader a privileged position as compared with private traders. Most States, including the United States, have now abandoned or are in the process of abandoning the rule of absolute immunity of foreign States with regard to what is usually described as acts of a private law nature. The position, in this respect, in Great Britain must be regarded as fluid.

To this last sentence the author appends the following note:

This is so in particular with regard to foreign public vessels engaged in commerce. In *The Cristina* [1938] A.C. 485 the majority of the House of Lords expressed views not favourable to immunity from jurisdiction in such cases. . . .

Dr. Cheshire, who is not customarily addicted to violent language, makes this observation in his recent (6th) edition, 1961, of his work on Private International Law. He says at p. 96:

That Sovereign States which engage in the sea-carrying trade should be relieved of the obligations to which private shipowners are subject is unjust, if indeed not preposterous. Moreover, the injustice has been increased by the emergence of welfare and totalitarian States, for the activities of sovereign governments, originally mainly political, have now expanded immeasurably both in extent and scope.

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With the greatest respect for those who hold a different view, I do not find it necessary in the present case to adopt that part of Lord Atkin's judgment in *The Cristina, supra,* in which he expressed the opinion that property of a foreign sovereign state "only used for commercial purposes" is immune from seizure under the process of our Courts, and I would dispose of this appeal entirely on the basis that the defendant ships are to be treated as (to use the language of Sir Lyman Duff) "the property of a foreign state devoted to public use in the traditional sense", and that the Exchequer Court was, therefore, without jurisdiction to entertain this action.

I would, therefore, dismiss this appeal with costs.

The judgment of Locke and Judson JJ. was delivered by

LOCKE J.:—This is an appeal from a judgment of Cameron J., delivered in the Exchequer Court[1], allowing the appeal of the Republic of Cuba from the decision of Pottier J., District Judge in Admiralty for the Nova Scotia Admiralty District, which dismissed the motion by the Republic of Cuba to set aside the writ and warrant of arrest issued in this action and service thereof on the ground that the Court was without jurisdiction to entertain the action.

While Pottier J. made no express finding upon the question as to the ownership of the ships, it would appear, as pointed out by Cameron J., that it was his opinion that the claim to ownership by the Republic of Cuba had been established. Cameron J. found as a fact that, as of the time of the issue of the writ and the seizure of the vessels on August 4, 1960, they were the property of the Republic. The evidence, in my opinion, supports that finding.

It is not disputed that on August 4, 1960, the Republic of Cuba was a sovereign state recognized by Canada, each of the countries being represented by an ambassador in the other.

There is no evidence as to the use to which the Republic of Cuba intended to put the vessels which it had purchased on June 9, 1959, and which, since that time, had been anchored in the Harbour of Halifax. The Republic was in possession and control of the ships on August 4, 1960.

[1] [1962] Ex. C.R. 1.

In my opinion, the law applicable in these circumstances is as it is stated in *Compania Naviera Vascongado v. S.S. Cristina*[1], in the following terms:

> The foundation for the application to set aside the writ and arrest of the ship is to be found in two propositions of international law engrafted into our domestic law which seem to me to be well established and to be beyond dispute. The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages.
>
> The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control.

In *Rahimtoola v. Nizam of Hyderabad*[2], Viscount Simonds adopted that statement as accurately stating these proceedings of international law.

The question as to whether the law extends to property only used for the commercial purposes of the sovereign does not arise in the present matter and I express no opinion as to it.

I respectfully agree with the reasons for judgment delivered in this matter by Cameron J. and I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitor for the plaintiff, appellant: H. P. MacKeen, Halifax.

Solicitor for the respondent: Donald McInnes, Halifax.