1922
October 19.

QUEBEC ADMIRALTY DISTRICT

PETER BROWN, JR.....PLAINTIFF;

AND

S.S. *INDOCHINE*.....DEFENDANT.

International Law—Person and property of the Sovereign—Exception from the Jurisdiction of Courts—King's vessel.

The SS. *Indochine* was the property of the Government of Indo-China, a French possession, administered by a Governor-General for and in the name of the French Republic. Her officers and crew were in the service and pay of that Government, and at the time of the accident she was on a voyage in the interest of the Government of Indo-China. She was arrested under proceedings taken in the Quebec Admiralty District on a claim made by the owners of the Danish Ship *Sarmatia* as a result of a collision between the two ships on the 11th August, 1922.

Held: That, recognizing it is an established principle of law that the person and property of foreign sovereigns and the property of independent sovereign states are exempt from the jurisdiction of the Courts of this country, the *Indochine* could not be lawfully arrested, and the warrant of arrest and all subsequent proceedings should be set aside and the action dismissed.

Semble: That a Sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign state owned ship is not affected by the vessel being used for trading purposes and as a cargo carrier, nor does it matter how the vessel is being employed.

APPLICATION for the release of the S.S. *Indochine* from arrest.

September 9th, 10th and 12th and October 10th and 19th A.D. 1922.

Case heard at the City of Montreal before the Honourable Mr. Justice Maclennan.

A. R. Holden, K.C., A. C. M. Thomson, for plaintiff.

F. J. Bissaillon, K.C. for defendant.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

MACLENNAN L. J. A. now (this 19th day of October, 1922) delivered judgment.

An application has been made to the Court for the release of the steamship *Indochine* from arrest, on a claim made by the owner of the Danish Steamship *Sarmatia* as the result of a collision between the two ships on 11th August, 1922. The application is based upon the representation that the SS. *Indochine* at the time of the collision was a French ship and belonged to the Government of Indo-China, a French possession which was administered by a Governor General governing and administering for and in the name of the French Republic, that the ship, her officers and crew were in the service and pay of that Government, and at the time of the accident the ship was on a voyage in the interest of the Government of Indo-China.

Counsel for plaintiff submit that the SS. *Indochine* is not the property of an independent Sovereign State within the meaning of International Law; that she was not being used in public service and that her owners had waived exemption from arrest by reason of having engaged in a commercial trading adventure.

By a document entitled "Acte de Francisation", dated 10th June, 1918, signed by the Governor General of Indo-China, it is certified in the name of the President of the French Republic that the *Indochine* is a French vessel belonging to the Government of Indo-China registered at Hanoi, the capital of the possession. Immediately following the collision, the Governor

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

General of Indo-China cabled to the Consul General of France, at Montreal, to take charge of the ship, and Marcel de Verneuil, Deputy Consul of the Consulat Général of France in Canada, has made an affidavit filed before me in the following terms:—

"Je, Marcel de Verneuil, consul adjoint du Consulat Général de France au Canada, domicilié au No 1745 de la rue Hutchison, en la cité de Montréal, étant dûment assermenté sur les Saints Evangiles, déclare:

"1. Que le navire *Indochine*, saisi en cette cause, était, lors de l'abordage du dit navire avec le vapeur *Sarmatia*, est et a toujours été la propriété du gouvernement de l'Indochine, possession française, administrée par un gouverneur-général, gouvernant et administrant pour et au nom de la République Française:

"2. Que la navire *Indochine*, ses officiers et hommes d'équipage sont au service du dit gouvernement de l'Indochine et à la solde de ce dernier;

"3. Que la navire *Indochine* voyageait le 11 août dernier et voyage constamment dans l'intérêt du gouvernement de l'Indochine, est une propriété publique, destinée et employée à l'usage du public de l'Indochine.

"et j'ai signé,
"M. de VERNEUIL".

"Assermenté devant moi,
"à Montréal, ce 7ème
"jour de Septembre 1922.

"W. S. WALKER,
"Dept. Reg."

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

Albert Ducamin, of Marseilles, France, a French Naval Reservist and Master of the *Indochine*, has made an affidavit in which it is stated that the ship, at the time of the collision with the *Sarmatia*, was and always has been the property of the Government of Indo-China, a French possession administered by a Governor General for and in the name of the French Republic; that the ship, her officers and crew are in the service and pay of said Government and that the said ship, on 11th August last, was on a voyage in the interest of said Government, and that she is public property destined and employed for the public use of Indo-China. The cross-examination of Captain Ducamin and the "Acte de Francisation" referred to show that the ship was originally a Japanese ship, had been purchased by the French Government and registered in the French colony of Indo-China, that her master and officers were engaged and paid by the Governor General of Indo-China and the ship was being used in the service of that colony. During the late war she was an armed vessel and she came from Indo-China to this side of the Atlantic with convicts to French Guiana and rice for Havana. On that voyage she had on board eighty armed soldiers to guard the convicts. After delivery of the convicts she proceeded to Havana where the rice was discharged and a cargo of sugar was shipped and carried to New York. The military guard was on board until the ship's arrival in New York. For the return voyage the ship entered into a charter party to proceed to Montreal where a cargo of grain was to be taken on board for carriage to France. While ascending the River St. Lawrence the collision, out of which this action has arisen, took place.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

No evidence was offered in contradiction of the foregoing as to the ownership of the *Indochine*.

Since the hearing of the application, the Deputy District Registrar of the Court has received, through the Registrar from the Deputy Minister of Justice, a copy of a communication to the Under-Secretary of State for External Affairs of Canada from the Consul General of France at Montreal, stating:— "Que le vapeur *Indochine* propriété de l'Etat français (Gouvernement Général de l'Indochine) a été l'objet d'une saisie ordonnée par la Cour d'Amirauté de Québec le 14 août 1922 sur la demande de M. Peter Brown, Jr., propriétaire du vapeur *Sarmatia*. J'ai l'honneur de faire remarquer que ce vapeur étant la propriété d'un Etat avec lequel le Canada entretient de bonnes relations d'amitié ne saurait être l'objet d'une saisie même conservatoire. Je vous serais donc reconnaissant de bien vouloir porter ce fait à la connaissance de M. le Ministre de la Justice", with the suggestion by the Minister of Justice for the consideration of the court that, if the Government of France in fact be as alleged the proprietor of the steamship *Indochine*, these proceedings are without jurisdiction upon the authority of the case of the *Scotia*, 1903, Appeal Cases 501, and the cases there cited by Counsel in argument. This suggestion and communication were brought to the notice of the representatives of the parties as well as representations in support of the plaintiff's claim, made by the Consul General of Denmark to the Minister of Justice which have also been placed before the Court. At the request of plaintiff, Counsel for both parties have reappeared and the case been argued a second time.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

It is an established principle of jurisprudence that the person and property of the Sovereign are exempt from the jurisdiction of the Courts. It is claimed by the applicant that by International Law a like immunity extends to the person and property of a foreign sovereign and to the property of an independent Sovereign State. In considering the reasons for the immunity extended to the person and property of one Sovereign by the courts of another Sovereign, the first case to be considered is *The Exchange* (1), where the Supreme Court of the United States, in 1812, held, that a public vessel of war of a foreign Sovereign at peace with the United States coming into an American port and demeaning herself in a friendly manner was exempt from the jurisdiction of the United States Courts. Chief Justice Marshall, in the course of a very learned opinion on behalf of the Court, said at page 136:—

"The world being composed of distinct sovereignties possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers.....
.....One Sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under

(1) [1812] 7 Cranch 116.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him..... Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employing force, or by subjecting such vessels to the ordinary tribunals. But until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction which it would be a breach of faith to exercise".

Immunity is not limited to foreign ships of war, but extends to the public property of a foreign Sovereign State which is destined to public use and to the property of any ambassador. The leading English case of this subject is *The Parlement Belge* (1), decided in the Court of Appeal in 1880. This ship was a mail packet running between Ostend and Dover and also carrying merchandise and passengers. She was the property of the Belgian King and was navigated and employed and in the possession of the Belgian Government. An action *in rem* was entered against her to recover damages in respect of a collision in English waters. Upon an application for discharge from the proceedings *in rem*, the question arose whether every part of the public property of every sovereign authority in use for national purposes is not as much exempt from the jurisdiction of every court as is the person of every sovereign. After having reviewed the decision in the case of *The Exchange* and other American and English decisions on the question, Lord Justice Brett, on behalf of the Court of Appeal (5 P. D. 214) said:—

(1) [1880] L. R. 5 P. D. 197.

"The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction".

The Court of Appeal further decided that, in a proceeding *in rem* for a claim made in respect of a collision, the owner of the vessel seized is at least indirectly impleaded and called upon to show why his property should not be condemned and sold in satisfaction of the claim. And Lord Justice Brett, at page 219, said:—

"To implead an independent sovereign in such a way is to call upon him to sacrifice either his property or his independence. To place him in that position is a breach of the principle upon which his immunity from jurisdiction rests. We think that he cannot be so indirectly impleaded, any more than he could be directly impleaded. The case is, upon this consideration of it, brought within the general rule that a sovereign authority cannot be personally impleaded in any court".

In the case of *The Parlement Belge* it was claimed that the immunity was lost by reason of the ship having been used for trading purposes, to wit, carrying cargo and passengers in addition to mails. It appears

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

from the reports of the case that the ship had been mainly used for the purpose of carrying the mails and only subserviently to that main object for the purposes of trade, and Lord Justice Brett, at page 220, said:—

"It has been frequently stated that an independent sovereign cannot be personally sued, although he has carried on a private trading adventure. It has been held that an ambassador cannot be personally sued, although he has traded; and in both cases because such a suit would be inconsistent with the independence and equality of the state which he represents. If the remedy sought by an action *in rem* against public property is, as we think it is, an indirect mode of exercising the authority of the Court against the owner of the property, then the attempt to exercise such an authority is an attempt inconsistent with the independence and equality of the state which is represented by such owner. The property cannot upon the hypothesis be denied to be public property; the case is within the terms of the rule; it is within the spirit of the rule; therefore, we are of opinion that the mere fact of the ship being used subordinately and partially for trading purposes does not take away the general immunity".

The decision of the Court of Appeal in *The Parlement Belge* is authority for:—

1st. The right of the foreign sovereign to have the public property of his state respected;

2nd. It is contrary to International Law and the comity of nations that an independent foreign sovereign should be directly or indirectly impleaded in the English Courts;

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

3rd. The dictum of Sir Robert Phillimore in *The Charkieh* (1), that a ship belonging to a foreign sovereign may lose its right to claim immunity from arrest, if it engages in commercial trading as a carrier of merchandise and passengers, is disapproved.

Taking *The Parlement Belge* as a starting point, the English Admiralty Courts, by successive decisions have come to recognize that all government-owned or government-requisitioned ships, whether used for military, political or commercial purposes, are in time of peace as well as of war immune from seizure. In *Young* vs SS. *Scotia* (2), the Judicial Committee of the Privy Council, on an appeal from the Supreme Court of Newfoundland, dismissed an appeal from a judgment which set aside the seizure upon a claim for salvage against a vessel which was used by the Canadian Government as a ferry boat in connection with a line of railways owned by the Government of Canada. In *The Jassy* (3), where a vessel belonging to the King of Roumania, employed for the public purposes of the state in connection with the national railways in Roumania, had been arrested in an action for damage by collision, the President of the Admiralty Court, Sir Gorell Barnes, dismissed the action.— In *The Broadmayne* (4) where an action for salvage was taken against a ship requisitioned by the Crown, the Court of Appeal ordered that all further proceedings in the action with a view to the arrest or detention of the ship be stayed so long as the ship shall remain under requisition in the service of the Crown, and Lord Justice Swinfen Eady, in the course of his judg-

(1) [1873] L. R. 4 Adm. & Ecc. 59.
(2) [1903] A.C., 501, 72 L. J. P. C. 115.
(3) [1906] P. 270, 75 L. J. Adm. 93.
(4) [1916] P. 64, 85 L. J. Adm. 153.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

ment, at 85 L. J. Adm. 155, said:—"It is clear that a ship which is requisitioned by the Crown is as free from arrest as a King's ship of war would be, and the exemption extends as well to claims of salvage as to claims for collision or other claim. The grounds upon which the exemption exists were fully stated in the judgment of the Court of Appeal in the case of *The Parlement Belge*, where the whole question is discussed."

In *The Crimdon* (1), where a writ *in rem* was issued on a claim arising out of a collision against the Swedish SS. *Crimdon*, at the time under charter in the service of the Government of the United States for public purposes, Hill J (in 1918) said at page 82:—"I am definitely of opinion that, following the decision and what underlies the decision in the case of *The Broadmayne*, the proper view is that the arrest could not be maintained. This, of course, is not a case where the the vessel was the property of the state. In such a case neither the writ *in rem* nor the arrest could be maintained. The writ *in rem* could not be maintained because you cannot sue the Sovereign personally by serving a writ on him, neither can you make him indirectly subject to the jurisdiction of the court by serving the writ *in rem* on the property". In *The Gagara* (2), the Court of Appeal confirmed the judgment of Hill J. setting aside the writ *in rem*, the warrant of arrest and all subsequent proceedings in an action against a ship which was in the possession, in England, of the Esthonian Government.—In *The Porto Alexandre* (3), the Court of Appeal confirmed the judgment of Hill J. to the effect that a Sovereign State cannot be impleaded in the English Courts,

(1) [1918] 35 T. L. R. 81. (2) [1919] 88 L.J. Adm. 101.
(3) [1920] P. 30; 89 L.J. Adm. 97.

either directly by a suit *in personam*, or indirectly by the arrest of its property, and that immunity is not affected by the fact that the property is employed not in a public national service, but in commerce.—Mr. Justice Hill, at page 99, said:—"My view is that the law as it now stands and as laid down in *The Parlement Belge* is that a Sovereign state cannot be impleaded either directly by being served in person, or indirectly by proceedings against its property, and that in applying that principle it matters not how the property is being employed". The ship in that case was the property of the Portugese Government.—In the Court of Appeal Lord Justice Bankes, at page 101, said:—"There is very little difference between the material facts in *The Parlement Belge* and in the present case and, in my opinion, *The Parlement Belge* covers this case". Lord Justice Warrington, at page 102, said:—"Whatever may be the actual use to which this ship is put, I think the evidence is quite sufficient to show that she is the property of the State, and is destined to its public use; and, therefore, the case seems to me to come exactly within the principle of the judgment in *The Parlement Belge*". In the same case Lord Justice Scrutton, at page 103, said:—"We are concluded in this court by *The Parlement Belge*. Sir Robert Phillimore took the view that trading with the property of a State might render that property liable to siezure; but the Court of Appeal overruled the views of Sir Robert Phillimore as I understand them". The Lord Justice then cites what was stated by Brett, L. J., at 5 P. D. 217, and quotes from Hall's International Law, 7th Ed., at page 211:—"If in a question with respect to property coming before the Courts

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

a foreign state shows the property to be its own, and claims delivery, jurisdiction at once fails, except in so far as it may be needed for the protection of the foreign state"; and then proceeds as follows:—"I quite appreciate the difficulty and doubt which Hill J. felt in this case, because no one can shut his eyes, now that the fashion of nationalization is in the air, to the fact that many States are trading, or are about to trade, with ships belonging to themselves; and if these national ships wander about without liabilities, many trading affairs will become difficult. But while it seems to me that *The Parlement Belge* excludes remedies in these Courts, there are practical commercial remedies. If ships of the State find themselves left on the mud because no one will salve them when the State refuses any legal remedy for salvage, their owners will be apt to change their views. If the owners of cargoes on national ships find that the ship runs away and leaves them to bear all the expenses of salvage, as has been done in this case. there may be found a difficulty in finding cargoes for national ships. These are matters to be dealt with by negotiations between Governments, and not by Governments exercising their power to interfere with the property of other states, contrary to the principles of international courtesy which govern the relations between Independent and Sovereign States. I think it is clear that we must in this Court stand by the decision of Hill J. and dismiss the appeal".

The English Court of Appeal (Lord Justice Bankes, Lord Justice Scrutton and Lord Justice Atkin) on July 12th, 1922, in the case of *Lynntown* vs *Tervaete* (1), reversed the decision (2) of the President of the

(1) 12 Lloyd's List Law Reports 252; (2) [1922] 91 L.J. Adm. 151.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

Admiralty Division. The English Steamer *Lynntown* had sustained damage from a collision with *The Tervaete*, then the property of the Belgian Government and employed in Government service. After the collision the Belgian Government sold the ship to private owners and she came to an English port where she was arrested by a procedure *in rem* by the owners of *The Lynntown*, who alleged that the collision gave rise to a maritime lien inchoate and dormant till *The Tervaete* ceased to be the property of the Belgian Government, but which could be enforced when the ship as the property of private owners came within British jurisdiction. The pretentions of the owners of *The Lynntown* were sustained by the President who refused to release *The Tervaete* and held, that the collision gave rise to a maritime lien against a ship owned by a foreign Sovereign State and used by that State for cargo-carrying purposes which could be enforced against the private owners who had bought the ship from the Belgian Government, but his decision was unanimously reversed by the Court of Appeal where it was held that a maritime lien could not attach to the property of a Sovereign State, and that at the time of the collision the Belgian Government could not have been sued *in personam* nor could their ship have been arrested *in rem*. Lord Justice Atkin, in the course of his opinion, said at page 256:—"The result appears to me to be that the maritime lien against a foreign Sovereign cannot exist at all". The principles laid down in *The Parlement Belge* were followed, the writ was set aside and all proceedings thereunder stayed.

The Courts in the United States, since the decision of *The Exchange*, have followed the same principles.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

In a leading case decided in Massachusetts, *Briggs* vs *Light Boats* (1), Mr. Justice Gray, referring to the immunity of foreign public vessels, said at page 165:—"The immunity from such interference arises not because they are instruments of war, but because they are instruments of Sovereignty and does not depend on the extent or manner of their actual use at any particular monent, but on the purpose to which they are devoted". And, at page 163, he says:—"It is difficult to see how the Government of a Republic can hold any property for personal or private purposes", In another Massachusetts case, *Mason* vs *Intercolonial Railway of Canada* (2), it was held that, the Courts of a State have no jurisdiction to procede with a suit against the Sovereign of another State or Country, and that a suit in tort against the property of a Railway of Canada, that is not a corporation in which any private individual has an interest, but is the property of the British Crown and is owned and operated by the King of England in the right of his Dominion of Canada, is properly dismissed. In *The Pampa* (3), it was held by one of the District Courts of New York, that a naval transport of the Argentine Republic was not subject to a libel for damages from collision, although at the time of the collision carrying a cargo of general merchandise belonging to private persons, and, as an incident to the vessel's voyage to the United States, to obtain coal and munitions for the use of the Argentine Government. In *The Maipo* (4), it was held by a District Court, that a Chilean naval transport, although chartered to a private individual to carry a commercial cargo, was not subject to

(1) [1865] 93 Mass. (11 Allen) 157.
(2) [1908] 197 Mass. 349.
(3) [1917] 245 Fed. Rep. 137.
(4) [1918] 252 Fed. Rep. 627; 259 Fed. Rep. 367,

seizure under process of an Admiralty Court of the United States in a suit by a shipper for damage to cargo. The case came before the District Court a second time (3), when it was held that a vessel owned and operated by a foreign Sovereign State, although engaged in the business of a common carrier, is exempt from seizure on process *in rem* from an Admiralty Court of the United States in a suit by a private individual whether based on contract or tort, and Circuit Judge Hough said:—"Why was a war vessel exempt from seizure? Not because it was a war vessel, but because it was a part of the exercise or manifestation of sovereign power. Why is any other vessel exempt? Why may any other piece of property be exempt? For the same reason, just as the Sovereign himself is exempt. Now, it may be the opinion of counsel, as it assuredly is my opinion, that when a sovereign republic, empire, or whatnot, goes into business and engages in the carrying trade, it ought to be subject to the liabilities of carriers just as much as any private person; but I think it must be plain that if I, in my official capacity, were to assert that view and enforce it, I would be assuming (in this case), as one of the humbler officers of the Government of the United States, to define for the Republic of Chile what that republic should consider to be a governmental function. If the Republic of Chile considers it a governmental function to go into the carrying trade, as would appear to be the case here, that is the business of the Republic of Chile; and if we do not approve of it, if we do not like it, if we do not wish any longer to accord that respect to the property so engaged, which has hitherto been accorded to government property, then we must say so through diplomatic channels, and not through the judiciary".

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

The recent judgment of the Supreme Court of the United States in the three cases of *The Western Maid*, *Liberty* and *Carolinian* (U. S. Sup. Ct., January 3, 1922)(1) emphasizes the non-liability of national ships in cases of collision. *The Western Maid*, owned by the United States and manned by the navy, was in collision in New York harbour. *The Liberty* was a pilot boat under charter to the govenment and had a collision in the harbour of Boston. *The Carolinian*, also a chartered ship, had done similar damage in Brest, France. The two latter had been re-delivered to the owners, and the former to the U. S. Shipping Board, when the libels were filed, so that the process in no way interfered with the possession of the Sovereign. In each case the Supreme Court issued its extraordinary writ of prohibition to prevent district courts from exercising jurisdiction.

An exhaustive review of the authorities, on the questions raised in this case, in England, United States and France, is to be found in Revue Internattionale du Droit Maritime, tome 34, 1922, 2éme semestre, page 1. In discussing the principles recognized in France, the writer of the review states at page 8:—"Les tribunaux français sont absolument incompétents pour connaître de l'action qu'un créancier du navire voudrait diriger contre l'Etat étranger. Le respect de la souveraineté des Etats ne permet pas aux tribunaux de statuer et, puisqu'il s'agit d'un service public de l'Etat étranger, le respect mutuel que se doivent les Etats leur commande de ne pas troubler, même par voie de droit, l'exécution de ces services. Le créancier éventuel n'aurait que la

(1) United States Supreme Court Advance Opinions, 1921-22, 185, and Michigan Law Review, vol. xx, March, 1922, p. 533.

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

ressource d'une action devant les tribunaux étrangers compétents, si, dans le pays étranger, on admet l'action judiciaire contre l'Etat, ou, à défaut, d'une réclamation diplomatique. La jurisprudence française admet cette règle sans hésitation".....
....."Quant à la saisie d'un navire étranger affecté â un service public, elle est naturellement impossible; une saisie qui n'aurait même qu'un caractère conservatoire porterait atteinte à la souveraineté de cet Etat."

On the question of the ownership of *The Indochine*, there is very little difference between the evidence in this case and the evidence in the case of *The Scotia*. In the latter case *The Scotia* was built in England for the Government of the Dominion of Canada, for use by the latter as a railway ferry for the carriage of railway trains between Ports Hawksbury and Mulgrave in the Province of Nova Scotia in connection with the operation of the Intercolonial Railway of Canada which was the property of and was operated by the Dominion Government. The Supreme Court of Newfoundland (Newfoundland Reports 1897-1903, p. 560), on the evidence of ownership, held that *The Scotia* was the public property of the Dominion of Canada and therefore the public property of His Majesty. This finding of fact was approved on appeal to the Privy Council. The evidence in the case now before the Court, including the "Acte de Francisation" or certificate of registry, establishes that *The Indochine* is a French ship registered in the French possession of Indo-China and is the public property of Indo-China and therefore the public property of the Republic of France, an independent foreign Sovereign State. During the war *The Indochine* was an armed vessel and since the war she

1922

BROWN JR. v. S.S. INDOCHINE.

Reasons for Judgment.

Maclennan L.J.A.

has been employed for the public use of Indo-China and was so engaged on the voyage which brought her across the Atlantic. In addition, there is the representation of the Consul General of France, that the ship belongs to his Government and, on the authority of *The Parlement Belge*, *The Exchange* and other cases which might be cited, that suggestion is conclusive. As the public property of a foreign Sovereign State, destined to public use, the ship is immune from arrest.

The English Court of Appeal, in *The Parlement Belge*, *The Porto Alexandre* and *The Tervaete*, and the Privy Council in the case of *The Scotia* and the other cases cited, English and American, lay down the general principle that immunity from arrest of a foreign state owned ship is not affected by the vessel being used for trading purposes and as a cargo carrier, that it matters not how the vessel is being employed and that a Sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. French jurisprudence is to the same effect. It would be a violation of the well established principles of International law and the doctrine of immunity so often enunciated in the Courts to permit this ship to be detained on an *in rem* proceeding on a claim for damages which should be the subject of diplomatic negotiations between the Government of the Country of which the plaintiff is a citizen, and the French Government. It is not a matter for the Courts.

I am therefore definitely of opinion that the arrest cannot be maintained, that this Court is without jurisdiction and cannot proceed further in the cause; (*The Mary Anne* (1), and *Stack* vs *Lepold* (2),) and as a

(1) [1865] 34, L. J. Adm. 73 at p. 74.

(2) [1918] 18, Ex. C.R. 325; 45 D.L.R. 595.

consequence the writ *in rem*, the warrant of arrest and all subsequent proceedings must be set aside and the action dismissed with costs, and there will be judgment accordingly.

Judgment accordingly.

Solicitors for plaintiff: *Messrs. Pentland, Gravel & Thomson.*

Solicitors for defendant: *Messrs Bissaillon & Beique.*