1942 *Present :* **Howard C.J. and Soertsz J.**

THE SUPERINTENDENT, GOVERNMENT SOAP FACTORY, BANGALORE *v.* COMMISSIONER OF INCOME TAX

122—D. C. (Inty.), Income Tax.

Mysore State—Sale of goods of Government Soap Factory in Bangalore—Profits earned in Ceylon—Liability to Income Tax—Position of Mysore State—Not a Sovereign State—Income Tax Ordinance (Cap. 188), ss. 2 and 5 (1) (b).

Profits derived from the sale in Ceylon of goods produced by the Government Soap Factory in Bangalore, which is owned by the State of Mysore, are liable to assessment for Income Tax.

The State of Mysore is not an independent Sovereign State and it cannot invoke in aid immunities arising by virtue of International Law.

There is no principle of International Law precluding the Legislature from enacting legislation imposing on a foreign State liability to pay income tax. On the other hand, unless the foreign State submits to the jurisdiction, there is no power or authority to enforce such liability.

THIS was a case referred to the Supreme Court by the Board of Review under section 74 of the Income Tax Ordinance. The main question referred to was whether the Government of Mysore was liable to pay Income Tax in respect of profits earned in Ceylon by the sale of goods produced by the Government Soap Factory in Bangalore.

H. V. Perera, K.C. (with him *A. Gnanapragasam*), for the assessee, appellant.—The assessee is in point of fact the Government of Mysore, which is a Sovereign State. In India, a foreign Government would be liable to pay income tax, but there is a special enactment enabling it. There is no such enactment in Ceylon. In relation to the Ceylon Government all other Governments are foreign. The question at issue has, therefore, to be examined according to certain general principles of International Law. Under International Law an ambassador enjoys various immunities and privileges. It has been held that a minister of a foreign country cannot be sued against his will, although the action may arise out of commercial transactions—*Parkinson v. Potter*[1]. See also *Westlake on International Law (7th ed.) pp. 266, 267* and *Sundaram on Law of Income Tax in India (5th ed.) p. 41.*

Section 5 of the Income Tax Ordinance (Cap. 188) is the primary charging section. The word "person" in that section is defined in section 2 as including a company or body of persons. "A body of persons" is also defined in section 2. Under section 7 (1) (*a*) a Government institution is exempt from tax, but the definition of "Government institution" in section 2 refers only to institutions in Ceylon. The Government of Mysore is not a "person" within the meaning of section 5. "Person" can never include the Government of a country—*Bell's South African Dictionary* p. 414 ; *Stroud's Dictionary*. The position in Ceylon is quite in conformity with the principle of International Law that a foreign State is not liable to taxation. See *Oppenheim on International Law (5th ed.) p. 626.*

H. H. Basnayake, Crown Counsel, for the Commissioner of Income Tax, respondent.—The question is whether there is a non-resident person for whom Hector Mather & Co. are agents. Section 34 of the Income Tax Ordinance enables the assessee to be taxed. The definition of "person" in section 2 is wide enough to include the Government of Mysore. There is no material in this case as to how the Government of Mysore is constituted. But whether it is an individual or a body of persons it would be a "person". For meaning of "person" see *In re Ram Prasad*[2] and *Commissioner of Income Tax v. Sind Light Railway Co., Ltd.*[3] In India

[1] *(1885) L. R. 16 Q. B. D. 152.*
[2] *A. I. R. 1930, All. 389 at 391.*
[3] *A. I. R. 1932 Sind. 189 at 193.*

Act III of 1926 did not create a new liability but only provided for the manner in which tax was to be levied from a State—*Sundaram on Law of Income Tax in India (5th ed.) p. 1171.* Section 7 of our Ordinance is intended to catch up everybody who is not expressly exempted.

Mysore State is not an independent State—*Lawrence on Principles of International Law (1937) p. 55; Wheaton on International Law (6th ed.), Vol. I., p. 104.*

H. V. Perera, K.C., in reply.—The burden of proof is on the Commissioner of Income Tax to show that the Mysore Government is a person. If any person or body of persons is a "person" within the meaning of that term in the Income Tax Ordinance, the Government of any foreign country, sovereign or non-sovereign, would be a person. Physical personality should not be confused with legal personality. The one question is whether the expression "person" has such a meaning as would include the Government of Mysore.

Cur. adv. vult.

July 13. 1942. HOWARD C.J.—

This is an appeal by the Superintendent of the Government Soap Factory, Bangalore, under section 74 of the Income Tax Ordinance. The appellant was assessed for Income Tax under the Income Tax Ordinance for the years of assessment 1937-38 and 1938-39 in respect of sales in Ceylon of goods produced by the Government Soap Factory, Bangalore, and marketed in Ceylon through the local agents, Messrs. Hector Mather and Company. The appellant appealed against the assessment to the Commissioner of Income Tax on the ground that the Soap Factory in question belonged to the Government of Mysore and hence no income tax could be levied in Ceylon in respect of any profits derived from sales in Ceylon as there was no express provision in Ceylon for the taxation of a foreign Government in respect of any profits derived by trading in Ceylon as there was in India. The assessment was confirmed by the Commissioner and subsequently on appeal by the Board of Reveiw. The Board has stated that the points for determination are in the following terms: "Ordinarily, a Foreign State cannot be made liable to income tax in Ceylon in respect of business done or profits earned in or derived from Ceylon, whether such a Foreign State can only be made liable to such tax upon legislative enactment passed after arrangement with it, whether the Mysore Government is such a Foreign State, whether the terms 'person' or 'body of persons' in our Ordinance would include Foreign Government departments and, even if so, whether the appellant is exempt from Income Tax on the ground that there has been proved pre-arrangement between the Government of Ceylon and the Government of Mysore on the subject of the liability to such taxation."

On appeal to this Court, Counsel on both sides have confined their arguments to two main issues, as follows:—

(a) Whether the appellant, or the Government of Mysore, is "a non-resident person" within the meaning of section 34 (1) of the Income Tax Ordinance?

(*b*) If the appellant or in the alternative the Government of Mysore is " a non-resident person " within the meaning of the section such Government and himself as its representative are exempt from assessment ?

With regard to (*a*) it may be formulated as a guiding principle as between the Crown and the person sought to be charged that taxing act must be construed with perfect strictness so far as the language of the Act enables the Judges to discover the intention of the Legislature. Thus in *Coltness Iron Company v. Black* [1] Lord Blackburn stated as follows :—

" No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden upon him. The only safe rule is to look at the words of the enactments and see what is the intention expressed by those words."

The obligation to make sure that the person to be charged is within the ambit of the taxing provision applies *a fortiori* if such taxation is sought to be levied on a foreign Government. Moreover, it is a well recognized rule laid down in a number of English cases that, in a statute imposing pecuniary burdens, if there is a reasonable doubt with regard to the construction of any burdensome provision, the construction most beneficial to the subject is to be adopted. In this connection I need only refer to *Stockton and Darlington Railway Co. v. Barrett* [2]. Counsel for the appellant has invited our attention to the position in India of Governments of other parts of His Majesty's Dominions who carry on trade in British India. Under the Government Trading Taxation Act III. of 1926, every trade or business carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, can be taxed in British India as though the business were that of a Company. Under this Act the profits of business carried on by Indian States in British India become taxable. This was apparently a reciprocal arrangement which was arrived at in the Imperial Economic Conference of 1923. It will be observed that no reference is made in the Act to the trading activities of States outside the British Empire. It is contended by Mr. Perera that in India specific provision has been made by the Act of 1926 for the taxation of the trading profits of other States within the British Empire and that without such provision such profits would not be taxable. As there is no such provision in Ceylon, the trading profits of the Government of Mysore are not taxable. He also maintains that an institution such as the Government of Mysore cannot be regarded as a " person " within the meaning of this terms as used in the Income Tax Ordinance. In section 5 (1) of the Ordinance tax is imposed in respect of the profits and income of every person for the year preceding the year of assessment—

(*a*) wherever arising in the case of a person resident in Ceylon ; and

(*b*) arising in or derived from Ceylon, in the case of every other person.

By section 34 (1) where a person, acting on behalf of a non-resident person, disposes of property brought into Ceylon, the profits therefrom shall be deemed to be derived by the non-resident person from business

[1] *6 A. C. at p. 315.*

[2] *7 M & G 871.*

transacted by him in Ceylon. Hence, such non-resident person is liable for income tax as if his profits were within the ambit of section 5 (1) (*b*). For the meaning to be attached to the word "person" the definitions of "person" and "body of persons" in section 2 require meticulous examination. "Person" includes a company or body of persons, whilst "body of persons" includes any local or public authority, any body corporate or collegiate, any fraternity, fellowship, association or society of persons, whether corporate or unincorporate and any Hindu undivided family, but does not include a company or a partnership. The question as to whether the word "person" included a State was considered in the matter of *Ram Prasad* [1], when it was argued that, under section 65 of the Government of India Act, the Indian Legislature had power to make laws only for persons within British India and that the Tehri State being not a person within British India is not subject to the Indian Legislature. It was further contended that Act III. of 1926 was *ultra vires* the Indian Legislature. In holding that this argument was not sound, the Court applied to the word "person" in section 65 of the Government of India Act the definition which is to be found in section 19 of the English Interpretation Act, 1889. This section is worded as follows :—

> "In this Act and in every Act passed after the commencement of this Act, the expression 'person' shall, unless contrary intention appears, include any body of persons, corporate or incorporate."

At this stage, I may observe that "person" in the Ceylon Income Tax Ordinance is defined as in the English Interpretation Act. In giving the judgment of the Court in the case I have cited, Mukerji J. stated as follows :—

> "It may be that the person who governs the State is a single individual or a body of persons. In either case, the governing authority, single or several in number, will come within the definition of the 'person' in section 65 of the Government of India Act, and those persons carrying on business within British India would be subject to any law that the Indian Legislature should frame and promulgate. The object of the Income Tax Act is to charge income tax acquired in British India and it is not in the contemplation of the Act to claim something in respect of something done in the territory of a Government which may have sovereign rights within its own territories. In our opinion Act III of 1926 was *intra vires* of the Indian Legislature."

Although the question as to whether the Tehri State would have been liable to pay tax apart from the provisions of the Act of 1926 and whether the effect of that Act was merely to provide that a State should be taxed as a "Company" was not decided, it could have been argued that inasmuch as "person" included the "Tehri State" the said State was liable to assessment apart from the Act of 1926. The phraseology of section 3 of the Income Tax Act, 1922, which imposes taxation is, however,

[1] *A. I. R. 1930, All. 389.*

different from that employed in the Ceylon provision, which imposes the tax on " persons ". The Indian provision is worded as follows :—

> " Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year . . . . tax shall be charged . . . in respect of all income, profits and gains . . . . of every individual, Hindu undivided family, company, firm and other associations of individuals."

The language imputed into the word " person " by the definitions in the interpretation clause in the Ceylon Ordinance is wider and more comprehensive than that employed in the Indian Act. Applying the interpretation given by the Court to the word " person " in the case of *Ram Prasad* (*supra*), I am of opinion that, unless there is some provision in the Ordinance indicative of an intention to exempt or unless the inclusion of such a Government within the ambit of a taxation provision is contrary to some provision of International Law, the word " person " includes the State of Mysore. In this connection I may point out that, in the *Commissioner of Income Tax v. Sind Light Railway Co., Ltd.*[1] it was held that, in section 26 (2) of the Income Tax Act, 1922, " person " includes the Secretary of State engaged in enterprises of a commercial nature.

I will not proceed to consider whether there is any provision in the Income Tax Ordinance to indicate that an institution such as the Government of Mysore is exempted from its operation. Section 7 (1) (*a*) exempts from the tax the income of a Government Institution. In section 2 " Government Institution " is defined to mean the Office of the Public Trustee, the Ceylon Government Railway, the Government Electrical Undertakings, the Colombo Port Commission and other Port and Harbour authorities, the Post Office, and any other department or undertaking of the Government of Ceylon. The fact that " Government Institutions " are given this wide interpretation and are specifically exempted from liability to tax seems to Indicate that " Government institutions " other than those of the Ceylon Government are liable. Moreover, the comprehensive definition of " body of persons " allows no avenue of escape for such an institution as the Government of Mysore or one of its departments, such as the Soap Factory.

There now remains for consideration the question as to whether the taxation of the trading profits made in Ceylon of the Mysore Government Soap Factory is contrary to some principle of International Law. Reference to this question is made in *The Law of Income Tax in India by V. S. Sundaram.* On page 41 the author states that broadly speaking the liability to taxation of a foreign State depends largely on the same considerations as determine the liability of a foreign State to be sued in the Municipal Courts of the country. It is a difficult question of International Law on which there appears to be a difference of opinion. One school of jurists appears to think that, if a foreign Government trades in this country, it is certainly liable to tax, though it will not be possible to enforce the liability, if the foreign State refuses voluntarily to discharge the liability ; while another schools seems to think that there is no liability at all. The author then expresses the view that a

[1] *A. I. R. 1932, Sind. 189.*

foreign Government is not within the ambit of section 3 of the Income Tax Act and it would not be possible to make the local agent of the foreign Government liable for the tax under sections 42 and 43 of the Act, inasmuch as such an Agent is presumably entitled to the same immunity from processes as the foreign Governments whom they represent. The extract from *Sunderam's Law of Income Tax in India,* cited by me, indicates that the matter is not free from doubt. The first problem that requires elucidation is whether the local Agent of the Government of Mysore is in the position of a diplomatic envoy of a foreign State. This involves consideration of the question as to whether the Government of Mysore can be regarded as a foreign State. The fact that a Government has agreed to restrictions on the exercise of its sovereign rights does not mean that it is less exempt from the jurisdiction of the Municipal Courts if it is a Government recognized as sovereign by His Majesty's Government. The matter was given comprehensive consideration in the case of *Duff Development Co. v. Kelantan Government*[1]. The question for decision by Their Lordships was whether Kelantan was a sovereign independent State. The House of Lords had before them an official letter from the Secretary of State for the Colonies stating that Kelantan was an independent State and its Sultan the sovereign ruler thereof, and that the King did not exercise or claim any rights of sovereignty over Kelantan. This official letter enclosed an agreement regulating the relations between the Sultan and the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, and in all matters of administration (other than those touching the Mohammedan religion and Malay custom) to follow the advice of an adviser appointed by the King. Their Lordships held it is settled law that it is for the Court to take judicial cognizance of the status of any foreign Government. If there can be any doubt on the matter, the practice is for the Court to receive information from the appropriate department of His Majesty's Government, and the information so received is conclusive. Where such information is forthcoming no other evidence is admissible or needed. It is not the business of the Court to inquire whether the Colonial Office rightly concluded that the Sultan was entitled to be recognized as a sovereign by International Law. The Secretary of State stated that Kelantan was an independent State and recognized as such by His Majesty. Moreover, it was the duty of the Courts to accept such a statement thus clearly and positively made as conclusive upon the point.

Our difficulties in this case are accentuated by the fact that we have no evidence as to the status of the Government of Mysore. We are entitled to take judicial cognizance of such status. No information as to such status is supplied by the appropriate department of His Majesty's Government. In these circumstances, in order to decide this point, I have been driven to invoke in aid authorities on International Law. *In Westlake on International Law (1910 Edition at pp. 41-43)* there is the following passage:—

"In the case of the great British Dependency, India, the relation is a little complicated by the fact that not the whole of it has been made

[1] *(1924) A. C. 797.*

a British dominion, many native states being allowed to exist in it under an undefined British supremacy. To speak accurately of such a case we want two words to express the two meanings of empire in English, one meaning, translatable in German by *reich*, being the total of the dominions of a given sovereign or state, the other translatable in German by *gebiet*, including the whole extent of territory in which he or it exercises power. In the former sense what is called British India is alone a part of the Empire, in the latter, the native states are included in it. The position of these is defined by two declarations carrying the highest authority. On the external side, the preamble of the Act of Parliament (1876), which applies to them the British Indian legislation against the slave trade, *st. 39 and 40 Vict., c. 46*, says—

> 'And whereas the several princes and States of India in alliance with Her Majesty have no connections, engagements or communications with foreign powers, and the subjects of such princes and States are, when residing or being in the places hereinafter referred to, entitled to the protection of the British Government, and receive such protection equally with the subjects of Her Majesty.'

On the internal side, that is the relation of the native States to the British power, the Government of India published the following notification in its official *Gazette*, No. 1,700E, August 21, 1891:

> 'The principles of International Law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the native States under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter.'

Thus India is a world of itself. Not only is the action of all foreign States excluded from every part of it, but those parts which are not included in the dominions of the King-Emperor are subject to a suzerainty, paramountcy or supremacy possessed by him, to which nothing paralled exists in the relations of States of International Law. The relations between any two or more of the latter are to be found in the public documents which establish them, and we have seen that no doubtful points are decided in favour of a suzerain by the mere force of that name. In India, on the other hand, the paramount power and the correlative subordination are left without definition, and it is taught that the treaties and grants held by the protected princes, and the precedents of our dealings with them and with the protected princes who hold no treaties or grants, must be read as a whole, so that the principles most recently laid down are to be applied to all, and those relating to any department of conduct, as military affairs or the duties of humanity, are to be ascertained for all from the document in which that department is most fully worked out for any one. (See *W. Lee-Warner 'The Protected Princes of India,' pp. 37-40*). Hence the Empire of India, as a term of State Law, must be understood in the widest sense. It comprises the whole peninsular and is indissolubly connected with the United Kingdom, the British Parliament of King, Lords and Commons having the ultimate authority over it."

In the *7th Edition of Lawrence on the Principles of International Law, p. 55,* the opinion of Westlake is endorsed in the following passage :—

> "We thus obtain two divisions of part-sovereign States, and it will be convenient to consider each separately. But before we do so we must exclude altogether from our classification such communities as the native States of India and the Indian tribes of North America. The former are sometimes spoken of as independent States; but in reality they are not even part-sovereign in the sense given to that term by International Law; for they may not make war or peace, or enter into negotiations with any power except Great Britain."

In the *6th Edition of Wheaton's Elements of International Law, Vol. I., p. 105,* the author, Professor Berriedale Keith, states as follows :—

> "The Indian Government has formally declared that the principles of International Law have no bearing upon the relations between itself and the native States under the suzerainty of the King and it is clear that the Native Princes of India have no international status in the sense in which it is used in this volume."

It would appear, therefore, that the authorities I have cited do not regard the Indian States as independent from the point of view of International Law. The State of Mysore has no position in International Law and cannot, therefore, invoke in aid immunities arising by virtue of such law.

Even if the Government of Mysore is to be regarded as an independent State, there is in my opinion a further ground for holding that this appeal cannot succeed. This involves a consideration of the precise immunity from legal process and local taxation enjoyed by independent States and their agents by reason of International Law. In the *5th Edition of Oppenheim's International Law, in Chapters VIII. and IX,* the inviolability and exterritoriality of diplomatic envoys is examined. One of the privileges of envoys in reference to their exterritoriality is exemption from taxes and the like. It is stated on page 626 that "as an envoy, through his exterritoriality, is considered not to be subject to the territorial supremacy of the receiving State, he must be exempt from all direct personal taxation, and, therefore, need not pay either income tax or other [illegible]ect taxes." The same principle is formulated by *Westlake on page 278* [illegible]d by *Wheaton, Vol. I., on page 465.* Moreover, in England the stocks [illegible]ividends or interest of any accredited Minister of any foreign State resident in the United Kingdom is expressly exempted from Income Tax by Rule 2 (*a*) of Schedule C of the Income Tax Act, 1918. It would appear that this immunity extends to the person and personal effects, and the property belonging to a Minister as representative of his Sovereign. But does that immunity extend to trading profits made, not by a Minister but by an agent of a department of a foreign Government ? The question of the immunity from seizure of a ship belonging to a foreign State, but engaged in trading, was exhaustively examined in the case of *The Parlement Belge*[1]. In this case it was held by the Court of Appeal reversing the decision of the Admiralty Division, that an unarmed Packet belonging to the sovereign State, and in the hands of officers commissioned by him,

[1] *5 P. D. 197.*

and employed in carrying mails, is not liable to be seized in a suit *in rem* to recover redress for a collision, and this immunity is not lost by reason of the Packets also carrying merchandise and passengers for hire. The judgment of the Court was delivered by Brett L.J. In the course of this judgment, he stated as follows :—

> "The first question really raises this, 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. Whether it is so or not depends upon whether all nations have agreed that it shall be, or in other words, whether it is so by the law of nations. The exemption of the person of every sovereign from adverse suit is admitted to be a part of the law of nations. An equal exemption from interference by any process of any Court of some property of every sovereign is admitted to be a part of the law of nations. The universal agreement which has made these propositions part of the law of nations has been an implied agreement. Whether the law of nations exempts all the public property of a State which is destined to the use of the State depends on whether the principle, on which the agreement has been implied, is as applicable to all that other public property of a sovereign or State as to the public property which is admitted to be exempt. If the principle be equally applicable to all public property used as such, then the agreement to exempt ought to be implied with regard to all such public property. If the principle only applies to the property which is admitted to be exempt, then we have no right to extend the exemption."

On page 220 moreover, there is the following passage :—

> "As to the second, 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. For all these reasons we are unable to agree with the learned Judge and have come to the conclusion that the judgment must be reversed."

The principle to be derived from this case 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 of every other Sovereign State, each state declines to exercise by means of any of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador, or over the public

property of any state which is destined to its public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory. The same principle was formulated in *Magdalena Steam Navigation Co. v. Martin*[1] and *Parkinson v. Potter*[2]. In the latter case Wills J., in his judgment, stated that one of the immunities enjoyed by a Minister, insisted on by all writers on International Law with whose works he was acquainted as beyond question, is the complete exemption from the jurisdiction of the Courts of the country to which the Minister is accredited. In *Magdalena Steam Navigation Co. v. Martin (supra)* it was held that the Minister of a foreign country cannot be sued against his will in this country, although the action may arise out of commercial transactions carried on here. This latter case removed a doubt arising from the case of *Taylor v. Best*[3], where Maule J. expressed doubts as to whether an ambassador in England could claim a complete immunity from all English process. The decision in *Taylor v. Best (supra)* was, however, based on the ground that where the ambassador had voluntarily appeared as one of several defendants and defended the action up to judgment, he had waived his privilege.

The principle formulated by the various cases I have cited is that the process of the Courts cannot be invoked against the person or property of an accredited Minister of a foreign State or against the property of that State. Hence the machinery of the Courts could not be employed to collect a sum levied against a foreign State by way of income tax. There appears, however, to be no principle of International Law precluding the legislature from enacting legislation imposing on a foreign State liability to pay income tax. On the other hand, unless the foreign State submits to the jurisdiction, there is no power or authority to enforce such liability.

For the reasons I have given, the appeal fails and must be dismissed with costs.

SOERTSZ J.—I agree.

Appeal dismissed.

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[1] *2 E. & E. 94.*

[2] *16 Q. B. D. 152.*

[3] *14 Q. B. 487*