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IN THE MATTER OF A REFERENCE AS TO THE POWERS OF THE CORPORATION OF THE CITY OF OTTAWA AND THE CORPORATION OF THE VILLAGE OF ROCKCLIFFE PARK TO LEVY RATES ON FOREIGN LEGATIONS AND HIGH COMMISSIONERS' RESIDENCES.

International law—Constitutional law—Assessment and taxation—Crown —Powers of municipalities in Ontario to levy rates on foreign legations and High Commissioners' residences.

*PRESENT:—Duff C.J. and Rinfret, Kerwin, Hudson and Taschereau JJ.

(1) [1942] A.C. 601; [1942] 1 All E.R. 657.

The following questions were referred to this Court:

Is it within the powers of the Council of the Corporation of the City of Ottawa to levy rates on

(1) properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America and Brazil, respectively, or

(2) on property in Ottawa owned and occupied by His Majesty in right of the United Kingdom as the Office and Residence of the High Commissioner for the United Kingdom, or

(3) on property in Ottawa owned and occupied by His Majesty in right of Australia as the Residence of the High Commissioner for the Commonwealth of Australia, and

(4) is it within the powers of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on property owned and occupied by the Government of the United States of America as the Legation of the United States in Rockcliffe Park?

The said municipalities are in the province of Ontario.

On said questions, opinions were given as follows:

Per curiam: Questions 2 and 3 should be answered in the negative, as the properties come within the exemption of Crown property in the Ontario *Assessment Act.*

As to questions 1 and 4:

Per the Chief Justice and Rinfret and Taschereau JJ. (the majority of the Court): These questions should be answered in the negative.

Per the Chief Justice: There are applicable certain general principles of international law (as applied in normal times and circumstances), accepted and adopted by the law of England (which, except as modified by statute, is the law of Ontario) as part of the law of nations. The general principle which governs the juridical position of the foreign minister is that he owes no allegiance to the state to which he is sent and that he is not subject to its laws. The inviolability of his residence, used as a legation, is one of the diplomatic immunities recognized by English law and acknowledged in all civilized nations as annexed to the ambassadorial character. The legation, for all the ordinary affairs of life, is equally, with the ambassador himself, not subjected to the authority of the territorial sovereignty. Taxes and rates imposed by statute in general terms in respect of the occupation or the ownership of real property are not recoverable from diplomatic agents in respect of real property occupied or owned by them or their states and occupied and used for diplomatic purposes. Such a statute creates no liability to pay; and it cannot, consistently with principle, create any effective charge upon the property: the property is not subject to process, or to visitation by government officers; and the foundation of this privilege is that the foreign state and its ambassador are immune from *coactio* (in the sense of Lord Campbell's judgment in *Magdalena Steam Navigation Co.* v. *Martin,* 2 E. & E. 94) direct or indirect. The contention that property of a foreign sovereignty in use for diplomatic purposes may, without infringement of the principles of international law, be subjected to such a tax as a charge upon the land, cannot be accepted. So long as the property is devoted to such use, the territorial sovereignty admittedly cannot enforce a charge;

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and if, in case of a sale, the charge is to stand as against the purchaser, the statutory proceeding is only a method of enforcing indirectly the law of the territorial jurisdiction against the public property of the foreign sovereign; it would be the assertion of a right over it adversely affecting it, because the charge would affect the price for which it could be sold; the creation of the charge would amount to the creation of a *jus in re aliena,* to a subtraction from the property of the foreign sovereign; and would be inconsistent with the principle "of absolute independence of every superior authority" which lies at the basis of the immunities conceded to a foreign sovereign and his property. The general language of the enactments imposing the taxation in question must be construed as saving the privileges of foreign states under the principles above stated. (It was pointed out that the principles governing the immunities of a foreign sovereign and his diplomatic agents and his property do not limit the legislative authority of the legislature having jurisdiction in the particular matter affected by any immunity claimed or alleged).

Per Rinfret J.: A principle of international law which has acquired validity in the domestic law of England and, therefore, in the domestic law of Canada, is that a foreign minister is not subject to the laws of the state to which he has been sent as a diplomatic representative; he enjoys an entire independence from its jurisdiction and authority; consequently, he is exempt from the jurisdiction of its courts. It is a necessary consequence of the legal impossibility of collecting the taxes against foreign states or diplomats that such taxes may not be assessed and levied on the properties owned and occupied by them and used for diplomatic purposes; nor, consistently with principle, can the municipal corporation create any effective charge upon the property, because, as this would affect the price for which the property could be sold later to an ordinary purchaser, it would only be an indirect way of coercing the foreign state.

Per Taschereau J.: It is a settled and accepted rule of international law in practically all the leading countries of the world, that property belonging to a foreign government, occupied by its accredited representative, cannot be assessed and taxed for state or municipal purposes. The immunity of the foreign minister from legal process in the country where he is sent extends to the property of his state, which is exempt from all forms of taxation. It is with this in mind that the *Assessment Act* of Ontario must be read. Concurrence expressed with the reasons of the Chief Justice.

Per Kerwin J.: On the basis that the questions submitted refer to the powers of the councils of the municipal corporations to impose assessments, taxes and charges, and not to their powers or those of the corporations acting through their officers and agents to compel payment of these taxes, questions 1 and 4 should be answered in the affirmative. As to the properties owned by the foreign states, there is nothing to prevent the ordinary procedure being taken (whatever may be the ultimate result thereof), that is, for the assessor to enter them on the assessment roll and the countries concerned as owners thereof, and for the collector's roll to be prepared and for the proper municipal authorities to enter in that roll the amount of taxes either for general or special rates or assessments; and for the tax collector to send a notice in the usual form showing the amount of taxes.

Per Hudson J.: Questions 1 and 4 should be answered in the affirmative, meaning thereby that the council of the municipality can impose such taxes, but this is qualified by the fact that assistance of the courts would not be given to enforce payment so long as the diplomatic immunity continued. The Dominion has the right to give a status to diplomatic representatives, and the Province is bound to recognize their status, but not necessarily bound to accord them privileges in matters falling within provincial legislative jurisdiction under s. 92 of the *B.N.A. Act*; the granting of the status does not carry with it immunities from provincial laws beyond those immunities recognized by the provincial legislature. There is no legislation of Canada or of Ontario granting immunities in respect of foreign legations, so that, if any exist, it must be by virtue of general principles of international law or of imperial legislation, having the force of law in Ontario. A consideration of the extent of such immunities under such principles and legislation leads to the conclusion that a court would be bound to hold that in Ontario no action could be proceeded with against any foreign sovereign or state or its diplomatic representatives who pleaded immunity, in respect of taxes imposed by municipal corporations, and the same rule would apply to any proceedings in court calculated to disturb their occupation of the land. But such immunity or privilege is one from action or molestation; it does not destroy liability. The Ontario legislature, which is supreme in the matters of municipal institutions and property and civil rights in the province, has not seen fit to exempt the land used for legations from municipal taxes. The tax when imposed creates a lien and charge on the land; and, on severance of diplomatic relations or disposal of the land by the foreign state or its representative, the lien might well become effective. Again, a substantial part of municipal taxation is imposed to pay for the services rendered by the municipality, such as water, sewerage, etc., which it would have a right to withhold until taxes are paid.

(References were made in the opinions to distinction between taxes which constitute payment for services rendered for the beneficial enjoyment of the particular property in respect of which they are assessed (as water rates, etc.) and those which are levied for general purposes. As to the first class: *Per* the Chief Justice: There is no obligation to provide the envoy from a foreign state gratuitously with water, or electricity, and it would be generally agreed that where a tax is in the nature of the price of a commodity, the person enjoying the benefit of that commodity ought to pay the price (though, *semble,* he cannot be compelled to do so, since his person is inviolate and his house and goods are exempt from legal process). *Per* Rinfret J.: The Attorney-General of Canada admitted that the "rates" with which the Court must deal in its answers do not include the charges imposed for such services or commodities. *Per* Kerwin J.: The word "rates" as used in the questions should not be so restricted.)

REFERENCE by His Excellency the Governor General in Council, under the authority of s. 55 of the *Supreme Court Act* (R.S.C. 1927, C. 35), of the following questions to the Supreme Court of Canada for hearing and consideration, namely:—

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Is it within the powers of the Council of the Corporation of the City of Ottawa to levy rates on

(i) properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America and Brazil, respectively, or

(ii) on property in Ottawa owned and occupied by His Majesty in right of the United Kingdom as the Office and Residence of the High Commissioner for the United Kingdom, or

(iii) on property in Ottawa owned and occupied by His Majesty in right of Australia as the Residence of the High Commissioner for the Commonwealth of Australia,

and is it within the powers of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on property owned and occupied by the Government of the United States of America as the Legation of the United States in Rockcliffe Park?

The Order in Council is set out in full in the reasons of the Chief Justice *infra*.

D. L. McCarthy K.C., *J. E. Read K.C.*, and *W. R. Jackett*, for the Attorney General of Canada.

Hon. G. D. Conant K.C. and *C. R. Magone K.C.* for the Attorney General for Ontario.

Rosario Genest K.C. for the Attorney General for Quebec.

F. B. Proctor K.C. and *G. C. Medcalf* for the City of Ottawa.

H. A. Aylen K.C., for the Village of Rockcliffe Park.

THE CHIEF JUSTICE.—His Excellency in Council has been pleased to refer to us certain questions. The Order-in-Council of the 19th of March, 1942, is as follows:—

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Minister of Justice reports:—

1. That it is the practice of the Council of the Corporation of the City of Ottawa to levy rates on

(*a*) the French legation in Ottawa which is the property of the Government of the French State;

(*b*) the Office and Residence of the High Commissioner for the United Kingdom in Ottawa which is the property of His Majesty the King in right of the United Kingdom;

(*c*) the United States Legation in Ottawa which is the property of the Government of the United States of America;

(*d*) the Residence of the High Commissioner for the Commonwealth of Australia in Ottawa, which is the property of His Majesty the King in right of Australia; and

(*e*) the Brazilian Legation in Ottawa, which is the property of the Government of Brazil;

2. That it is the practice of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on the United States Legation in Rockcliffe Park which is the property of the Government of the United States of America;

3. That, as a matter of international courtesy, the Government of Canada pays the said rates.

AND WHEREAS the Minister is of opinion that the question as to the validity of any tax levied by any province, municipality or other authority in Canada upon the property of a foreign state or upon the property of His Majesty the King in right of the United Kingdom or of any other part of His Majesty's dominions is an important question of law touching the relations of the Government of Canada with foreign powers and with the other Governments of the British Commonwealth as well as the constitutionality and interpretation of provincial legislation.

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under the authority of Section 55 of the Supreme Court Act, is pleased to refer and doth hereby refer the following questions to the Supreme Court of Canada for hearing and consideration, namely:—

Is it within the powers of the Council of the Corporation of the City of Ottawa to levy rates on

(i) properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America and Brazil, respectively, or

(ii) on property in Ottawa owned and occupied by His Majesty in right of the United Kingdom as the Office and Residence of the High Commissioner for the United Kingdom, or

(iii) on property in Ottawa owned and occupied by His Majesty in right of Australia as the Residence of the High Commissioner for the Commonwealth of Australia,

and is it within the powers of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on property owned and occupied by the Government of the United States of America as the Legation of the United States in Rockcliffe Park?

As regards the properties owned and occupied by the High Commissioner for the United Kingdom and the High Commissioner for the Commonwealth of Australia, the powers of the Council of the Corporation of the City of Ottawa do not extend to these properties since they are embraced within the expressed exemption of Crown property by enactments of the *Assessment Act*.

In *Chung Chi Cheung* v. *The King* (1), Lord Atkin, delivering the judgment of the Judicial Committee, said, at pp. 167-8:—

It must be always remembered that, so far, at any rate, as the Courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own

(1) [1939] A. C. 160.

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domestic law. There is no external power that imposes its rules upon our own code of substantive law or procedure. The Courts acknowledge the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and, having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals. What, then, are the immunities of public ships of other nations accepted by our Courts, and on what principle are they based?

In *Mortensen* v. *Peters* (1), Lord Dunedin, then Lord President of the Court of Session in Scotland, said:—

> It is a trite observation that there is no such thing as a standard of international law extraneous to the domestic law of a kingdom, to which appeal may be made. International law, so far as this Court is concerned, is the body of doctrine regarding the international rights and duties of states which has been adopted and made part of the law of Scotland.

There are some general principles touching the position of the property of a foreign state and the minister of a foreign state that have been accepted and adopted by the law of England (which, except as modified by statute, is the law of Ontario) as part of the law of nations. It should, however, be observed at the outset that we are only concerned here with such rules as applied in normal times and in normal circumstances. We are not in any way concerned with the qualifications of these rules that may be necessary in order to meet special circumstances in which the interest of the state in relation to public safety, or public order, may be affected. What I have to say as to general principles must, therefore, be taken to be subject to that observation. Nor does any question arise as to the particular classes of diplomatic agents who are the subjects of immunities which indisputably are enjoyed by a foreign minister.

It is probable that the privileges attributed to foreign representatives by the law of England, as part of the law of nations, are at least as liberal as those recognized by the law of any other country. In *Heathfield* v. *Chilton* (2), Lord Mansfield said:—

> The law of nations will be carried as far in England, as anywhere.

The general principle which governs the juridical position of the foreign minister is that he owes no allegiance to the state to which he is sent and that he is not subject to the

(1) (1906) 8 F. (J. C.) 93, at 101. (2) (1767) 4 Burrow 2015.

laws of that state. It is his duty, no doubt, to respect those laws and it may be his duty to comply with them; but where that is so the duty springs from an obligation which is incumbent upon him as the representative of a foreign sovereignty to refrain from any action which may prejudice the well-being of the country in which he is dwelling. Vattel says (Law of Nations, Chitty's Edit., Book 4, Chap. 7, p. 470, para. 92):—

> The inviolability of a public minister, or the protection to which he has a more sacred and particular claim than any other person, whether native or foreigner, is not the only privilege he enjoys; the universal practice of nations allows him, moreover, an entire independence of the jurisdiction and authority of the state in which he resides.

And he adds at page 471:—

> On the whole, therefore, it is impossible to conceive that the prince who sends an ambassador, or any other minister, can have any intention of subjecting him to the authority of a foreign power: and this consideration furnishes an additional argument which completely establishes the independency of a public minister. If it cannot be reasonably presumed that his sovereign means to subject him to the authority of the prince to whom he is sent, the latter, in receiving the minister, consents to admit him on the footing of independency: and thus there exists between the two princes a tacit convention, which gives a new force to the natural obligation.

This last passage is quoted by Marshall C.J. in his judgment in the celebrated case of *The Schooner Exchange* v. *McFaddon* (1); and the principle it expresses forms in part the foundation of the decision. The Chief Justice observes at pages 138-39:—

> The assent of the sovereign to the very important and extensive exemptions from territorial jurisdiction which are admitted to attach to foreign ministers, is implied from the considerations that, without such exemption, every sovereign would hazard his own dignity by employing a public minister abroad. His minister would owe temporary and local allegiance to a foreign prince, and would be less competent to the objects of his mission. A sovereign committing the interests of his nation with a foreign power, to the care of a person whom he has selected for that purpose, cannot intend to subject his minister in any degree to that power; and, therefore, a consent to receive him, implies a consent that he shall possess those privileges which his principal intended he should retain—privileges which are essential to the dignity of his sovereign, and to the duties he is bound to perform.

The judgment of Marshall C.J. was pronounced in the year 1812. The position of an ambassador came to be considered fifty years later by a Court of great authority presided over by Lord Campbell, as Lord Chief Justice, and

(1) (1812) 7 Cranch 116.

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including Mr. Justice Erle, Mr. Justice Wightman and Mr. Justice Crompton, in the *Magdalena Steam Navigation Company* case (1). Lord Campbell, delivering the judgment of the Court, said, at p. 111:—

> The great principle is to be found in *Grotius de Jure Belli et Pacis*, lib. 2, c. 18, s. 9, "Omnis coactio abesse a legato debet." He is to be left at liberty to devote himself body and soul to the business of his embassy. He does not owe even a temporary allegiance to the Sovereign to whom he is accredited, and he has at least as great privileges from suits as the Sovereign whom he represents. He is not supposed even to live within the territory of the Sovereign to whom he is accredited, and, if he has done nothing to forfeit or to waive his privilege, he is for all juridical purposes supposed still to be in his own country. For these reasons, the rule laid down by all jurists of authority who have written upon the subject is, that an ambassador is exempt from the jurisdiction of the Courts of the country in which he resides as ambassador. Whatever exceptions there may be, they acknowledge and prove this rule.

He adds, at page 113:—

> There is great difficulty in seeing how the writ can properly be served, for the ambassador's house is sacred, and is considered part of the territory of the sovereign he represents.

In 1894 the subject was discussed by the Court of Appeal in *Musurus Bey* v. *Gadban* (2). At p. 356, A. L. Smith, L.J., referring to the judgment of Lord Campbell in the case just mentioned, said:—

> This case renders it unnecessary to resort to text-writers, and to other cases prior thereto, for it lays down in clear and unambiguous language the principles upon which an ambassador is free from being impleaded in the Courts of this country.

The next paragraph leaves no room for doubt as to what he conceived these principles to be:—

> Lord Campbell, in delivering the considered judgment of the Court of Queen's Bench, which consisted of himself, Wightman, Erle, and Crompton JJ., used this language of an ambassador: "He does not owe even a temporary allegiance to the Sovereign to whom he is accredited, and he has at least as great privileges from suits as the Sovereign whom he represents. He is not supposed even to live within the territory of the Sovereign to whom he is accredited, and, if he has done nothing to forfeit or to waive his privilege, he is for all juridical purposes supposed still to be in his own country." These being the principles upon which an ambassador is independent of the civil jurisdiction of the country to which he is sent, in my judgment it is clearly inconsistent with them to hold that an ambassador, who has at least as great privileges of exemption from suits as the Sovereign whom he represents, can, even apart from the 7 Anne, c. 12, have a writ sued out against him

(1) *Magdalena Steam Navigation Company* v. *Martin*, (1859) 2 E. & E. 94.
(2) [1894] 2 Q.B. 352.

commanding him in the name of Her Majesty to appear in her Courts to answer the claim of one of her subjects, even although such writ is not to be served.

The judgment of Davey, L. J., in the same case is equally explicit. He says, at p. 361:—

Lord Campbell, at p. 111, states the principle to be that for all juridical purposes an ambassador is supposed still to be in his own country, and he concluded his judgment in these words: "It certainly has not hitherto been expressly decided that a public minister duly accredited to the Queen by a foreign State is privileged from all liability to be sued here in civil actions; but we think that this follows from well-established principles." These passages, in my opinion, correctly state the legal principles on which the exemption is founded, and are in accordance with the course of decisions in our Courts: see, for example, the latest case of *The Parlement Belge* (1), in the Court of Appeal, in which it was said (I am reading from the marginal note, which is fully borne out by the judgment) 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.

In the treatise on constitutional law in Halsbury's Laws of England, of which the principal author is Dr. Holdsworth, Lord Campbell's phrases are repeated without alteration. Article 625 reads as follows:—

The immunities accorded to public ministers by the usages of nations, which have come to be known as international law, are expressly recognized in the law of England.

In accordance with the principle *Omnis coactio abesse a legato debet,* a public minister does not owe even a temporary allegiance to the Sovereign to whom he is accredited, and has at least as great an immunity from suits as the Sovereign whom he represents. He is not supposed even to live within the territory of the State in which he exercises his functions, and is for all juridical purposes supposed to be still in his own country.

This is the language of the first edition, which is reproduced in Lord Hailsham's edition, published in 1932.

It is proper to add here a sentence from the judgment of the Court of Appeal in *The Parlement Belge* (2):—

The real principle on which the exemption of every sovereign from the jurisdiction of every Court has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority.

(1) (1880) 5 P.D. 197. (2) (1880) 5 P.D. 197, at 207.

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One of the diplomatic immunities recognized by English law, as already intimated, is the inviolability of the ambassador's residence, that is to say, of the legation. Vattel puts it this way:—(Chap. IX, p. 494, para. 117)

> The independency of the ambassador would be very imperfect, and his security very precarious, if the house in which he lives were not to enjoy a perfect immunity, and to be inaccessible to the ordinary officers of justice. The ambassador might be molested under a thousand pretexts; his secrets might be discovered by searching his papers, and his person exposed to insults. Thus, all the reasons which establish his independence and inviolability, concur likewise in securing the freedom of his house. In all civilized nations, this right is acknowledged as annexed to the ambassadorial character; and an ambassdor's house, at least in all the ordinary affairs of life, is, equally with his person, considered as being out of the country. * * *
>
> The house of an ambassador ought to be safe from all outrage, being under the particular protection of the law of nations, and that of the country; to insult it, is a crime both against the state and against all other nations.

The qualification "at least in all the ordinary affairs of life" must be read as excluding the fiction of exterritoriality in its extreme form. This extreme doctrine, according to which a ship of war is a floating part of the territory of the sovereignty to which she belongs, is finally rejected as a doctrine of the law of nations, recognized by the law of England, in the judgment of the Judicial Committee of the Privy Council, delivered by Lord Atkin, in *Chung Chi Cheung* v. *The King* (1) *supra.* I shall revert to this point.

The current view is well expressed by Sir Cecil Hurst in a disquisition published in Académie de Droit International, Recueil des Cours, Vol. 2, 1926, p. 161, and cited in the last edition of Oppenheim's International Law at p. 629:—

> Tout le monde est d'accord pour admettre que la résidence officielle d'un agent diplomatique jouit du privilège diplomatique et qu'elle est exempte de la juridiction locale. Le privilège s'étend à tous les locaux occupés par l'agent diplomatique à titre officiel. Ces locaux sont inviolables: les autorités locales ne peuvent ni y entrer, ni y exercer les actes de leurs fonctions sans le consentement de l'agent diplomatique.
>
> L'accord sur ce point est si complet qu'il n'y a pas lieu d'entrer dans des détails. La question a été discutée, il est vrai, mais à une époque déjà éloignée; on trouvera des différends à ce sujet relatés dans des livres tels que *Les Causes célèbres du droit des gens* de Martens. Ces différends ont presque toujours été causés par une tentative faite par l'agent diplomatique en vue de mettre à l'abri de la justice quelqu'un qui s'était réfugié dans l'ambassade ou dans la légation.

(1) [1939] A.C. 160

La résidence officielle de l'agent diplomatique a un droit égal aux immunités, quel que soit son caractère et sans égard aux conditions de la tenure. Qu'elle soit une maison ou un appartement, qu'elle appartienne au gouvernement ou à l'agent diplomatique lui-même, ou qu'elle soit tenue à bail, la résidence officielle a toujours droit au bénéfice des immunités aussi longtemps qu'elle est habitée par une personne y ayant droit.

Ce n'est pas la résidence officielle seule qui est ainsi privilégiée, mais tous les biens sans lesquels l'agent diplomatique ne pourrait pas remplir sa mission. Comme le dit Vattel: "Toute les choses qui appartiennent à la personne du ministre en sa qualité de ministre public, tout ce qui sert à son usage, tout ce qui sert à son entretien et à celui de sa maison, tout cela a l'indépendance du ministre et est absolument exempt de toute juridiction dans le pays." De même qu'un agent diplomatique ne pourrait pas remplir sa mission sans des fonctionnaires pour l'assister et des domestiques pour le servir, il a besoin des archives et de la correspondance officielle dans sa chancellerie, d'ameublement pour sa maison, de voitures et d'automobiles pour se déplacer, de fonds déposés en banque pour défrayer les dépenses de son établissement.

Ces biens sont donc tous soustraits à la juridiction locale, et, puisque l'agent diplomatique seul peut décider si une chose lui est ou non nécessaire pour remplir ses devoirs, les privilèges doivent s'étendre à tous ses biens dans le pays de son poste.

Néanmoins les immunités ne sont accordées aux biens meubles que sous la présomption qu'ils sont employés aux fins de la mission. Dans le cas où un emploi abusif en est fait, l'agent diplomatique ne doit pas se plaindre si les privilèges ne sont pas respectés.

Hall's International Law, 8th edit., p. 233:

In Europe * * * it has been completely established that the house of a diplomatic agent gives no protection either to ordinary criminals, or to persons accused of crimes against the state. A minister must refuse to harbour applicants for refuge, or if he allows them to enter he must give them up on demand.

As Lord Atkin points out in the judgment mentioned, the fiction of exterritoriality, when applied in its extreme form, would deprive the local courts of jurisdiction where a burglary is committed on an embassy and, while the fiction is not a satisfactory or admissible explanation of diplomatic immunities, it does not, of course, follow that the principles laid down by Mansfield C.J., Marshall C.J., Lord Campbell, and other great Judges, as well as by Vattel and other authoritative text-writers, are not to be accepted merely because a form of expression, which experience has shown to be objectionable, is employed. The reasons given by Lord Campbell in the *Magdalena Company* case (1), explaining the basis of the diplomatic privilege, which consists in immunity from legal process, are expressly approved in the House of Lords as recently as 1928 by Lord Phillimore (*Engelke* v. *Musmann* (2)).

(1) (1859) 2 E. & E. 94. (2) [1928] A.C. 433, at 450.

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The alternative juridical basis suggested by Marshall C.J. is that the immunity is established on the principle that the minister is considered as in the place of the sovereign he represents and on that basis it is impliedly granted by the governing power of the nation to which the minister is deputed. In the passage quoted above from Vattel, and adopted by Marshall C.J., it is said:—

> It is impossible to conceive that the prince who sends an ambassador, or any other minister, can have any intention of subjecting him to the authority of a foreign power.

In the words of Marshall C.J. himself in the same judgment, also quoted above:—

> A sovereign committing the interests of his nation with a foreign power, to the care of a person whom he has selected for that purpose, cannot intend to subject his minister in any degree to that power; and, therefore, a consent to receive him, implies a consent that he shall possess those privileges which his principal intended he should retain.

This, then, is the juridical principle, upon which the immunity rests and, to quote Marshall C.J. again (1), as regards any particular exemption from territorial jurisdiction implied in favour of a foreign sovereignty:—

> Its extent must be regulated by the nature of the case, and the views under which the parties requiring and conceding it must be supposed to act.

An authoritative French Author, Pradier-Fodéré, Cours de Droit Diplomatique, Tome 2, p. 45, says:—

> L'indépendance [de l'agent diplomatique] consiste dans le droit et dans le fait de ne point être placé sous la juridiction et sous l'autorité de l'Etat où il réside, de n'être soumis à aucune juridiction, à aucune autorité étrangères. Que le gouvernement auprès duquel le ministre public est accrédité n'ait aucun pouvoir sur lui; que l'agent diplomatique ne puisse être distrait de ses fonctions par aucune chicane; qu'il n'ait rien à craindre du souverain à qui il est envoyé: voilà ce qui constitue l'indépendance.

As regards the immunity of the legation itself, as Vattel says in the passage quoted above, all the reasons which establish his independence and inviolability "concur likewise in securing the freedom of [the ambassador's] house." The right is acknowledged in all civilized nations as annexed to the ambassadorial character and the legation, for all the ordinary affairs of life, is equally, with the ambassador, himself, not subjected to the authority of the territorial sovereignty.

(1) *Schooner Exchange* v. *McFaddon*, (1812) 7 Cranch 116, at 143.

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* (1) *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* (2). It most certainly cannot be said that this is a settled doctrine, in view of the opinions expressed in the *Cristina* case (3), although Lord Atkin, who delivered the judgment of the Judical Committee in *Chung Chi Cheung* v. *The King* (4) *supra,* 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.

There is no controversy, however, that this immunity from legal process extends to the property of the foreign sovereign devoted to diplomatic uses. I shall return later to a consideration of the principle involved in this immunity.

Turning to the application of these general principles to the subject now before us.

The taxes in question may be broadly divided into two classes: those which constitute payment for services rendered for the beneficial enjoyment of the particular property in respect of which they are assessed, and those which are levied for general purposes. As regards the first class, water rates may perhaps be taken as typical. There is, of course, no obligation upon a state which receives an envoy from a foreign state to provide him gratuitously with water, or electricity, and it would be generally agreed that where a tax is in the nature of the price of a commodity, the person enjoying the benefit of that commodity ought to pay the price. As regards taxes (strictly so-called), they are imposed by the authority of the state, whether immediately, or mediately, through a municipality, or other agency. The imposition of a tax presupposes a person from whom, or a thing from which, it is exacted, or collected. It is so

(1) (1880) 5 P.D. 197.
(2) (1926) 271 U.S. 562.
(3) *Compania Naviera Vascongado* v. *S.S. Cristina,* [1938] A.C. 485.
(4) [1939] A.C. 160.

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exacted, or collected, in virtue of superior political authority. It does not require much argument to establish that, consistently with the general principles enunciated in the authorities already quoted, such an exaction cannot be demanded by one equal sovereignty from another, or from its diplomatic agent; and there is a general acceptance of the view that such tribute is not exigible, consistently with the principles of the law of nations. We are concerned at present with taxes demanded in respect of real property, and we need not consider how far it is consistent with general principles to exact from diplomatic agents licence fees, bridge tolls, stamp duties, and other imposts which, it may at least plausibly be argued, are taken in payment for specific services rendered directly to the particular individual who pays for them and belong to the same category as water rates and electric rates; nor need we touch on the subject of customs duties. The precise question we have to consider is whether a tax imposed by a statute in general terms in respect of the ownership and of the occupation of real property, or levied upon real property itself, extends to the case where such property is owned, and occupied, by a foreign state, or its diplomatic agent, and is employed for the public diplomatic purposes.

A series of statutes of the Imperial parliament, some of which are collected in the 18th Vol. of Hertslet's Treaties, (1893) edit., p. 462, illustrate the manner in which Parliament has for more than one hundred and fifty years viewed such questions. The subject is considered in the case of *Parkinson* v. *Potter* (1). The statute there in question was a local Act relating to the Parish of Saint Marylebone, 35 Geo. 3, chapter 73, sec. 190. The enactment provided that rates, or assessments, made in virtue of the Act in respect of any property inhabited by an "ambassador, envoy, resident, agent, or other public minister of any foreign prince or state, * * * " or "any other person not liable by law to pay such rate or assessment" should be paid by and recoverable from the landlord of such property. The question was whether an attaché of the Portugese Embassy occupying property within the description of the Act was a person "not liable by law" to pay the parochial rates assessed in respect of the property. Mr. Justice Mathew, at pp. 157-8, said:—

(1) (1885) 16 Q.B.D. 152.

It was said, and there is authority for the assertion, that there are certain charges, amongst which are rates of this description, in respect of which it is not usual to set up this privilege, but it is none the less clear that, if the privilege is claimed, the only remedy of the person against whom it is asserted is by appealing to the authorities of the country from which the ambassador is accredited.

It is important to notice that the question before the Court was whether or not the attaché was "a person not liable by law to pay" the rate in question. The decision necessarily involves the proposition that the statute making occupiers, of which the attaché fell within the statutory description, liable to pay the rate, imposed no liability upon persons enjoying diplomatic immunities. This particular enactment is one among a number of local statutes; but there is a statute of 1797 (38 Geo. III, Chap. 5) "granting an aid to His Majesty by a land tax," which is not a local Act, that is to the same effect.

In a note to Section 31 of the *Metropolitan Paving Act, 1817,* in Halsbury's Statutes of England, Vol. 11, p. 853, it is said:—

> In *Macartney* v. *Garbutt* (1), it was held that a British subject accredited to this country as a member of the embassy of a foreign power is privileged against seizure of his goods for non-payment of rates on the ground that in the absence of an express condition to the contrary, he is exempt from the local jurisdiction of this country.

In the case mentioned in this note, Mr. Justice Mathew at p. 369 said:—

> For the defendant it was conceded that the plaintiff, if he had been a foreigner, might be entitled to the exemption which he claimed; but it was argued that, as a British subject, he remained liable to the laws of his own country; and it was said that he was not within the description of persons exempt by the local Act, for the operation of the Act was limited by the words "or any other person not liable by law to pay such rate."
>
> In support of this contention, reliance was placed on passages of Chapter XI of Bynkershoek "De Foro Legatorum", which, it was said, showed that the minister of a foreign state accredited to his own country remained subject to the laws of the state to which he owed allegiance. But the view of the learned author would seem to be that the envoy would be entitled to exemption from the local jurisdiction in all that related to his public functions, and this would seem to be the opinion of later writers on the subject (see Wheaton, International Law, 2nd ed., edited by Lawrence, p. 189, and the authorities there referred to). If this be the rule, the plaintiff would be protected from the seizure in question, which unquestionably interfered with the performance of his duty as a member of the embassy.

In Konstam's Modern Law of Rating (1927) at p. 84 it is said:—

(1) (1890) 24 Q.B.D. 368.

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Ambassadors and ministers of foreign States, and members of foreign embassies and legations, and their servants, are not rateable for offices or residences occupied by them.

In the treatise on constitutional law in Halsbury, already cited, at page 508, it is said:—

A public minister's immunity as regards rates and taxes, although deducible from the general principles as to his freedom from taxation which are sanctioned by international usage, is sufficiently safeguarded in English law by the fact that no action can be brought against him to enforce payment (*Parkinson* v. *Potter*) (1).

It is also said, at p. 507:—

The Diplomatic Privileges Act, 1708 (7 Ann. c. 12), s. 4, provides for the punishment of all persons and their attorneys and solicitors who take any proceedings in contravention of the Act. The immunity conferred by the statute, while professing merely to secure the persons and property of public ministers against the process of the Courts, does in fact confer upon them complete freedom from interference. Thus, the exterritoriality or inviolability of a public minister's house—as to the extent of which writers on international law differ considerably—is safeguarded by the fact that the minister is not amenable to the jurisdiction of the Courts in respect of his actions.

This is perhaps a convenient place to point out that the statute of Anne, as it has been construed, specifically prohibits judicial process of every description, as well as distress, but it is merely declaratory and explanatory of the common law and is neither limitative or exhaustive. *Triquet* v. *Bath* (2); *In re Republic of Bolivia Exploration Syndicate, Limited* (3).

The United States statute was enacted in very similar terms about one hundred years after the statute of Anne. The passage already quoted from the judgment of Marshall C. J. shows that this statute, like the statute of Anne, has been regarded only as declaratory and affording a summary remedy in respect of the violation of rights established by the law of nations. Marshall C.J. says (4):—

It is true that in some countries, and in this among others, a special law is enacted for the case. But the law obviously proceeds on the idea of prescribing the punishment of an act previously unlawful, not of granting to a foreign minister a privilege which he would not otherwise possess.

(1) (1885) 16 Q.B.D. 152; 11 Digest 538, *409*.
(2) (1764) 3 Burrow 1478 at 1481. (3) [1914] 1 Ch. 139 at 144.
(4) *Schooner Exchange* v. *McFaddon,* (1812) 7 Cranch. 116, at 138.

In the last edition of Stephen's Commentaries on the Laws of England, Vol. 1, p. 153, the law of England seems to be properly stated:—

> The ambassador's house is for many purposes treated as though it were a part of the territory of the state by which he is accredited. Accordingly it is not subject to the jurisdiction of the English courts; and the ambassador is not liable to pay rates or taxes in respect of it.

The practice of many other countries seems to accord generally with the English practice.

Mr. Hall, in the work from which I have already quoted, places non-subjection to taxation among the immunities of diplomatic agents. He says, at p. 235:—

> The person of a diplomatic agent, his personal effects, and the property belonging to him as representative of his sovereign, are not subject to taxation. Otherwise he enjoys no exemption from taxes or duties as of right. By courtesy, however, most, if not all, nations permit the entry free of duty of goods intended for his private use.

In Lawrence's Principles of International Law, at p. 316, it is said:—

> Immunities connected with property apply first and foremost to the official residence of the ambassador, usually called his *hotel*. It is generally regarded as inviolable except in cases of great extremity. The fiction of exterritoriality is sometimes applied to it, and it is held to be a portion of the state to which its occupant belongs. But the theory is a clumsy attempt to account for what is better explained without it. If it were true, the hotel could in no case be entered by the local authorities; whereas it is universally admitted that the extreme circumstances which justify the arrest of a diplomatic minister of a foreign power and the seizure of his papers, justify also forcible entry into his hotel and its search by the officers of the state to which he is sent.

And at page 318:—

> The ambassador is free from the payment of taxes levied upon it, whether for purposes of state or for the maintenance of municipal government; but if the charge for such commodities as light and water takes the form of local taxation, he would be expected to meet the demands for them, just as he is expected to pay the bills for the provisions consumed by his household, though he cannot be compelled to do so, since his person is inviolate and his house and goods are exempt from legal process.

In Pitt Cobbett's Cases on International Law, Vol. 1, p. 319, para. 3, it is said:—

> The Ambassador's Residence.—The buildings and grounds within which an ambassador resides and carries on his mission, by whomsoever owned, are also exempt from the local jurisdiction, to such an extent, at any rate, as may be necessary to secure the free exercise of his functions. The building, its appurtenances and contents, are also exempt from all forms

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of taxation, whether general or local; although service rates ought to be paid except where this obligation is waived by mutual arrangement. The ambassador's residence is also exempt from all ordinary forms of legal process; nor is there, in general, any right of entry on the part of the local authorities, without the ambassador's consent. At the same time this immunity cannot, save, perhaps, in the special cases mentioned below, be set up in derogation of the safety and public order of the territorial Power. Hence, if offenders, who would otherwise be subject to the local jurisdiction, either take refuge or are detained within the embassy, their surrender may be demanded, and, if necessary, enforced, by the local authorities; and this whether the offence was committed within the precincts of the embassy or not, and whether it is of a political or non-political character.

In the Practice of Diplomacy, by Mr. John W. Foster, who was Secretary of State under President Cleveland and had a very wide diplomatic experience, it is said, at p. 171:—

> The personal effects of a diplomatic officer, the property of the mission, and the real estate occupied by the legation residence and office, if owned by the foreign government, are exempt from taxation; but this exemption does not usually extend to water rents and lighting charges.

The rule in France is that immovables occupied by diplomatic agents accredited to the Government of France are exempt from property tax when the property is owned by the foreign state. This rule is set forth in La Revue de Droit International Privé, 1908, p. 324, in a letter from the Minister of Finance (M. Caillaux) to the Minister of Foreign Affairs, dated Paris, June 5th, 1907, in these terms:—

> Vous avez bien voulu me faire part du désir, exprimé par M. le Ministre du Portugal à Paris, de connaître "quels sont en France les lois, décrets et règlements qui ont édicté et qui régissent les franchises en matière de droits de douane, de droits d'octroi, d'impositions personnelles-mobilières, de portes et fenêtres, d'impositions ou taxes d'Etat ou de ville, concédées aux membres du Corps diplomatique étranger", et d'être renseigné exactement "sur le détail des immunités fiscales tant de taxes d'Etat que de taxes de villes qui leur sont accordées."
>
> Afin de vous mettre à même de satisfaire à cette demande, j'ai l'honneur de vous indiquer ci-après les règles suivies en la matière pour chaque nature d'impôts.
>
> 1. Contributions directes et taxes assimilées.—Pour les contributions directes et les taxes qui y sont assimilées, il n'existe pas, à proprement parler, de lois, de décrets ou de règlements relatifs aux immunités diplomatiques: ces immunités sont accordées soit pour des motifs de haute convenance internationale, soit en vertu des dispositions des traités conclus entre la France et les pays étrangers.—En fait, les immeubles occupés par les agents diplomatiques accrédités auprès du Gouvernement français sont affranchis de l'impôt foncier, et en même temps des centimes généraux, départementaux et communaux additionnels au principal dudit impôt, lorsque ces immeubles sont la propriété des Etats étrangers. La règle dont

il s'agit est basée sur le principe que les propriétés satisfaisant à cette dernière condition sont considérées comme une dépendance du territoire étranger et fictivement distraites du territoire français.

In Calvo's Le Droit International, Vol. 3, p. 325, para. 1530, the author, who represented his country, the Argentine Republic, in more than one capital of Europe and is a recognized authority upon this subject, says:—

Quant à l'impôt foncier, les ministres publics ne peuvent s'en affranchir pour les immeubles qu'ils possèdent, alors même que ces immeubles sont affectés uniquement à leur logement personnel. Il en serait tout autrement, si l'hôtel de la légation était la propriété de leur gouvernement; car les convenances internationales ne permettent évidemment pas de traiter un gouvernement étranger comme un contribuable ordinaire et, partant, de l'assujettir à des impositions territoriales et directes.

There appears to be no known case in which a demand has been made to compel a diplomatic agent to pay a tax imposed by the territorial government. In an article by Francis Deak in Revue de Droit International (1928), Tome IX, p. 537, this appears:—

(4) L'exemption des impôts et d'autres charges civiques n'est qu'une conséquence logique de la situation privilégiée des agents diplomatiques. Même s'ils étaient soumis aux taxes locales, il n'y aurait pas moyen de contraindre ces agents à payer ces taxes, puisque aucune procédure ne peut être entamée contre eux. Le principe est reconnu d'une manière tellement universelle, qu'on ne connaît pas d'exemple d'un agent diplomatique qui ait été contraint de payer des impôts, centraux ou locaux, du pays auprès duquel il était accrédité. Si le principe de l'immunité en général doit être maintenu, il paraît raisonnable également de maintenir l'exemption fiscale. On pourrait cependant se demander si cette exemption doit être étendue aux biens qu'un ministre public pourrait posséder personnellement dans le pays où il exerce ses fonctions.

In a circular instruction from the Secretary of State to American Diplomatic Officers, dated the 9th of November, 1928, the rule in the United States is thus expressed (Feller and Hudson, Diplomatic and Consular Laws and Regulations, Vol. 2, p. 1348):—

Property in the District of Columbia owned by foreign governments for Embassy and Legation purposes is exempt from general and special taxes or assessments. Property owned by an Ambassador or Minister and used for Embassy or Legation purposes is exempt from general taxes but not from special assessments for improvements. The payment of water rent is required in all cases, as this is not regarded as a tax but the sale of a commodity.

Under the condition of reciprocity, in Spain property owned by a foreign state and used for diplomatic purposes appears to be exempt from land tax (pp. 1126-27); and

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the same rule appears to prevail in Turkey (p. 1187), in Russia (p. 1218), in Austria (p. 56, Vol. 1). Such property appears to be exempt in Denmark (pp. 414-15), in Germany, subject to reciprocity (pp. 568-69), and in Italy, on the same condition (pp. 710-11).

The general result appears to be that in England taxes and rates imposed by statute in general terms in respect of the occupation or the ownership of real property are not recoverable from diplomatic agents in respect of real property occupied by them or owned by them, or their states, and occupied and used for diplomatic purposes. Such a statute creates no liability to pay, as we have seen, and it cannot, I think, consistently with principle, create any effective charge upon the property. The property is not subject to process, or to visitation by government officers; and the foundation of this privilege is that the foreign state and its ambassador are immune from *coactio* direct, or indirect. Lord Campbell, in the *Magdalena Company* case (1) *supra.* says, at p. 113:—

> Mr. Bovill, being driven from his supposition that the writ in this case might be sued out only to save the Statute of Limitations, by the fact that it had been served upon the defendant, and by the allegation in the plea that it was sued out for the purpose of prosecuting this action to judgment, strenuously maintained that at all events the action could be prosecuted to that stage, with a view to ascertain the amount of the debt, and to enable the plaintiffs to have execution on the judgment when the defendant may cease to be a public minister. But although this suggestion is thrown out in the discussion which took place in the Common Pleas, in *Taylor* v. *Best* (2), it is supported by no authority; the proceeding would be wholly anomalous; it violates the principle laid down by Grotius; it would produce the most serious inconvenience to the party sued; and it could hardly be of any benefit to the plaintiffs. In the first place, there is great difficulty in seeing how the writ can properly be served, for the ambassador's house is sacred, and is considered part of the territory of the sovereign he represents; nor could the ambassador be safely stopped in the street to receive the writ, as he may be proceeding to the Court of our Queen, or to negotiate the affairs of his Sovereign with one of her ministers. It is allowed that he would not be bound to answer interrogatories, or to obey a subpoena requiring him to be examined as a witness for the plaintiffs. But he must defend the action, which may be for a debt of 100,000*l*, or for a libel, or to recover damages for some gross fraud imputed to him. He must retain an attorney and counsel, and subpoena witnesses in his defence. The trial may last many days, and his personal attendance may be necessary to instruct his legal advisers. Can all this take place without "coactio" to the ambassador?

(1) (1859) 2 E. & E. 94.

(2) (1854) 14 Com. B. 487, 493.

The legal consequences on assessment of land under the assessment law of Ontario include these: Where the property and the persons assessed are not exempt from taxation, the tax levied, pursuant to the assessment, may be recovered as a debt from the owner, or tenant, originally assessed. The taxes are a lien upon the land and by statutory extra-judicial proceedings the land may be sold and a title vested in the purchaser and the proceeds of the sale applied in payment of the taxes. Moreover, generally speaking, where taxes are a lien on land, the municipality possesses a power of distress upon the goods and chattels of the owner, or tenant, whose name is on the collector's roll, found anywhere within the county. As to the personal obligation to pay and the liability of the Minister to have his goods distrained, his automobiles, for example, seized, anywhere within the county where the legation is situate, sufficient has been said.

As to the sale of the land for the recovery of the tax, it is difficult to see how the proceedings can be said not to involve *coactio* in the sense of Lord Campbell's judgment. Obviously the foreign state would be immediately concerned with the amount of the valuation and, if the valuation appears to him to be unjust, his only remedy is the statutory remedy involving ultimately, it may be, an appearance before the Court of Appeal for the province. In the last resort the taxing authority, or the purchaser of the property, must apply to the Courts, which are without jurisdiction.

As to the charge upon the land, it has been argued that a tax enforceable against its real property is not directly imposed upon the foreign sovereignty and, therefore, that property of the foreign sovereignty may be subjected to such a tax without any infringement of the principles of international law. Where the property is in use for diplomatic purposes, it is impossible to accept this view. So long as the property is devoted to such uses, the territorial sovereignty admittedly cannot enforce a charge; but, if the property is transferred, does the charge stand as against the purchaser? If so, the statutory proceeding is only a method of enforcing indirectly the law of the territorial jurisdiction against the public property of the foreign sovereign. It would be the assertion of "a right", to use the

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words of Scrutton L.J., in *The Tervaete* (1), "over the property of a foreign sovereign not arising from any voluntary action on his part, which adversely affected his property", because obviously the charge would affect the price for which the property could be sold. The creation of the charge amounts to the creation of a *jus in re aliena,* to a subtraction from the property of the foreign sovereign. Such a proceeding would seem to be inconsistent with the principle "of absolute independence of every superior authority", *per* Brett L.J., *The Parlement Belge* (2) *supra,* (*par in parem non habet imperium*), which, as we have seen, lies at the basis of the immunities conceded to a foreign sovereign and his property.

The following passage from the judgment of Lord Wright in the *Cristina* case (3) *supra,* at p. 510, is apposite:—

> But as Sir H. S. Giffard S.-G. pungently pointed out in argument in *The Parlement Belge* (2): "The privilege depends on the immunity of the sovereign, not on anything peculiar to a ship of war."

The rule followed by France in relation to the property of foreign states occupied by diplomatic agents accredited to the French government for diplomatic purposes (stated in the memorandum of M. Caillaux), that such property is exempt from land tax levied by the general government, as well as from departmental and communal taxes in respect of such property, has, as we have seen, been justified in France on the ground that such property is considered as a dependency of the foreign territory "et fictivement distraites du territoire français". This fiction of exterritoriality must be disregarded. Nevertheless, the substance of the principle adopted by France, namely, that the legislation of the French state imposing such taxes does not, out of respect for the principles of international law, embrace within its purview such property of foreign states, remains quite unaffected by the disregard of this fiction; and is solidly founded upon accepted principles.

I think, I repeat, that the proper conclusion from the legislation of the Imperial Parliament, particularly in the eighteenth century, in force, as some of the statutes were, when the common law was formally introduced into Upper Canada, from the decisions and judgments I have cited, and from the text-writers, is that this rule, recognized by France,

(1) [1922] P. 259 at 272. (2) (1880) 5 P.D. 197.
(3) [1938] A.C. 485.

is also implicit in the principles of international law recognized by the law of England; and, consequently, by the law of Ontario.

The principles governing the immunities of a foreign sovereign and his diplomatic agents and his property do not, of course, limit the legislative authority of the legislature having jurisdiction in the particular matter affected by any immunity claimed, or alleged. It is not necessary, in the view I take, to consider the respective jurisdictions of the Parliament of Canada and the local legislatures in this matter of taxation in respect of real estate owned, or occupied, by a foreign state, or a diplomatic agent in his character of representative of a foreign state. The general language of the enactments imposing the taxation in question must be construed as saving to the privileges of foreign states. The general principle is put with great clearness and force in the judgment of Marshall C.J., from which I have quoted so freely. These are his words (1):

> 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. * * * Those general statutory provisions * * * which are descriptive of the ordinary jurisdiction * * * ought not, in the opinion of this Court, to be so construed as to give them jurisdiction in a case, in which the sovereign power has impliedly consented to waive its jurisdiction.

The questions referred should all be answered in the negative.

RINFRET J.—Two points were made clear in the course of the argument on this reference by His Excellency the Governor General in Council:

1. The Attorney General of Canada admitted that the "rates" with which the Court must deal in its answers do not include the charges imposed as for services rendered and commodities supplied, such as, for example, water rates or charges for electricity;

2. The Attorney General for the Province of Ontario made no submission with regard to questions numbers 2 and 3, in respect of property in Ottawa owned and occupied by His Majesty in right of the United Kingdom, as the office and residence of the High Commissioner for the

(1) *Schooner Exchange* v. *McFaddon,* (1812) 7 Cranch 116, at 146.

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United Kingdom, or in the right of Australia, as the residence of the High Commissioner of the Commonwealth of Australia.

As a matter of fact, so far as these properties are concerned and as the law now stands, they are exempt from liability to taxation under the *Assessment Act* of the Province.

One more point seemed to follow from the argument presented, and that is: that the word "rates", in the Order-in-Council, is meant to connote and include the word "taxes". For present purposes, the two words are interchangeable.

It must be held, I think, that amongst the principles of international law which have acquired validity in the domestic law of England and, therefore, in the domestic law of Canada, it is generally admitted that a foreign Minister is not subject to the laws of the State to which he has been sent; he enjoys an entire independence of the jurisdiction and authority of the latter State; and there exists towards him an implied consent that he shall possess all the privileges which his principal (his Sovereign or the State which he represents) intended that he should retain, as those privileges are essential to the dignity of his Sovereign and to the duties he is bound to perform. As a consequence, he is exempt from the jurisdiction of the courts of the country in which he resides as a diplomatic representative.

This, in my view, is demonstrated in the reasons of my Lord the Chief Justice, which I have had the privilege to read.

It being so, the questions which are submitted for the consideration of the Court deal with foreign legations in the City of Ottawa and the Village of Rockcliffe Park which are owned and occupied as legations by the governments of the French State, the United States of America and the government of Brazil. Occupation alone is not submitted in the questions. We are asked to envisage legations owned by these foreign States and occupied as legations.

This assumes a condition of things where the recourse of the municipal corporation is limited to a recourse against the foreign State itself as owner of the property, or against the foreign diplomat who occupies the legation owned by his government as diplomatic representative thereof.

The problem is not one which raises questions with regard to the respective competence of the Dominion Parliament and of the Provincial Parliament. It is limited to the ascertainment of the legislative competence of a Provincial Parliament to levy rates or taxes on property of foreign governments owned and occupied as legations.

The solution, it seems to me, must, therefore, be found in the remedies which the municipal corporations are empowered to adopt in order to collect their taxes, including, of course, the powers which the Provincial Legislature is competent to delegate, in that respect, to the municipal corporations.

A municipal corporation, through its council, must collect taxes in a sufficient amount to supply the total sum required for its expenditures under its yearly budget.

It would be an empty procedure for the municipal council to enter on its assessment roll amounts of taxes against property owned and occupied by foreign states, for, as they are uncollectable, the municipal council, at the end of the year, would find the amount in its hands available for its municipal purposes, as shown by its budget, deficient to the extent of the aggregate amount of taxes uncollectable against foreign states or diplomats. Thus it could not succeed in making both ends meet—as it must.

Indeed, the assessment roll, if it should include taxes which are admittedly uncollectable, would be misleading, as it would show assets which are not, in fact, available to the council.

It seems, therefore, a necessary consequence of the legal impossibility of collecting the taxes against foreign states or diplomats that such taxes or rates may not be assessed and levied on the properties owned and occupied by them and used for diplomatic purposes.

Nor do I think that, consistently with principle, the municipal corporation can create any effective charge upon the property under consideration, because obviously the charge would affect the price for which the property could be sold later, if a sale was effected by the foreign State to an ordinary purchaser. This would only mean an indirect way of coercing the foreign State.

For these reasons, in my view, the questions referred should all be answered in the negative.

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KERWIN J.—The questions of law submitted to us for hearing and consideration touch "the relations of the Government of Canada with foreign powers and with the other governments of the British Commonwealth, as well as the constitutionality and interpretation of provincial legislation." I propose to deal first with the foreign powers referred to, viz., the French State, the United States of America, and Brazil.

The City of Ottawa and the Village of Rockcliffe Park are situate in the Province of Ontario. Generally speaking, it could not be denied that under head 8 of sec. 92 of the *British North America Act,* the legislature of that province could legislate with reference to municipal institutions in the province, and that it had authorized these two municipal corporations to impose a tax on real property within their boundaries. This being so, Lord Atkin's statement in the *Labour Conventions* case (1) appears to be pertinent:—

> No further legislative competence is obtained by the Dominion from its accession to international status, and the consequent increase in the scope of its executive functions.

However, it was not suggested that by reason of the Dominion having sent and accepted diplomatic representatives, Parliament acquired any further legislative powers "to keep pace with enlarged functions of the Dominion Executive;" but it was argued that the purchase by the named countries of properties used by them as Legations or residences of Ministers prohibits the Councils of the municipalities where such properties are situate from levying rates thereon.

The importance of the matters raised by the questions and of the results flowing from the answers to be given thereto requires a precise definition of the expression "levy rates." Counsel for the Attorney-General of Canada submitted that the word "rates" should not include any charge that might be imposed under the provisions of the Ontario *Public Utilities Act,* R.S.O. 1937, c. 286,—presumably on the theory that any public utility furnished thereunder should and would be paid for as for services rendered or commodities supplied. This can hardly be so, in any event so far as the City of Ottawa is concerned, since the power to establish rates for an available supply

(1) *Attorney General for Canada* v. *Attorney General for Ontario, et al.,* [1937] A. C. 326, at 352.

of water is to be found in certain special legislation to which our attention has been drawn. Under section 11 of the parent Water Works Act of the City of Ottawa (35 Vic. c. 80 (Ont.)), the Water Commissioners have power and authority to fix the price, rate or rent

> which any owner or occupant of any house, tenement, lot, or part of a lot, or both, in, through, or past which the water pipes shall run, shall pay as water rate or rent, whether such owner or occupant shall use the water or not, having due regard to the assessment and to any special benefit and advantage derived by such owner and occupant, or conferred upon him or her or their property by the water works, and the locality in which the same is situated.

It is my understanding that by the existing legislation the powers conferred upon the Water Commissioners by section 11 of the original statute are now exercisable by the Council of the City of Ottawa. If that were not so, then we are not concerned with the powers of the Commissioners, as the questions submitted to us relate to the powers of the Council. However, it is unnecessary to refer further to this legislation or to express any opinion as to its effect except to point out that the price, rate or rent may be fixed having due regard to the assessment of any house, tenement, lot or part of a lot in, through or past which the city water pipes shall run, whether the owner or occupant uses the water or not. We were not told what the situation is as regards the Village of Rockcliffe Park, but what has been stated is sufficient to indicate that the word "rates" as used in the questions should not be restricted as suggested but must apply to all assessments, taxes and charges. In fact, in the second recital of the Order in Council the word "tax" is used and not the word "rates."

We are not called upon in this Reference to express any opinion as to what meaning the word "levy" might bear if under varying circumstances concrete questions had arisen as to whether the council of a municipal corporation in the Province of Ontario had or had not levied rates, but for the purpose of ascertaining what the Order in Council means when it uses the word, it appears to be not inappropriate to examine at least some of the numerous sections of such Acts of that province as *The Municipal Act,* R.S.O. 1937, c. 266, *The Assessment Act,* R.S.O. 1937, c. 272, and *The Local Improvement Act,* R.S.O. 1937, c. 269.

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Section 315 of *The Municipal Act* requires the Council of every municipality to levy in each year on the whole ratable property according to the last revised assessment roll a sum sufficient to pay all debts of the Corporation; but by section 318 of the same Act,

> the rates *imposed* for any year shall be deemed to have been *imposed* and to be due on and from the first day of January of such year unless otherwise expressly provided by the by-law by which they are *imposed.*

By section 2 of *The Assessment Act,* where no other express provision is made, all municipal, local or direct taxes shall be levied upon the whole of the assessment for real property, income and business or other assessments made under the Act; and by subsection 1 of section 3, yearly rates or any special rate authorized to be levied upon all the ratable property of a municipality for municipal or school purposes are to be calculated at so much in the dollar upon the total assessment, and shall be calculated and levied upon the whole of the assessment made under the Act. With these provisions should be contrasted section 103, where the word "levied" is used in conjunction with the words "assessed" and "collected":—

> 103. All moneys assessed, levied, and collected under any Act by which the same are made payable to the Treasurer of Ontario, or other public officer for the public uses of Ontario, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the collector's rolls in separate columns, in the heading whereof shall be designated the purpose of the rate.

Section 2 and subsection 1 of section 3 may also be contrasted with section 114, where the word "levy" is used, although not as empowering the Council, but the Tax Collector, to levy unpaid taxes by distress.

Subsection 1 of section 20 of *The Local Improvement Act* provides:—

> Except as in this Act is otherwise expressly provided, the entire cost of a work undertaken shall be specially assessed upon the lots abutting directly on the work, according to the extent of their respective frontages thereon, by an equal special rate per foot of such frontage sufficient to defray such cost.

By subsection 1 of section 52, the Council is to impose upon the land liable therefor the special assessment with which it is chargeable in respect of the owners' portion of the cost; and by subsection 3:—

The council may also either by general by-law or by a by-law applicable to the particular work prescribe the terms and conditions upon which persons whose lots are specially assessed may commute for a payment in cash the special rates imposed thereon.

In addition to these statutes, attention may be directed to the decision of the Court of Appeal for Ontario in *Re Therriault and Town of Cochrane* (1). Under subsection 1 of section 67 of *The Separate Schools Act,* 3 and 4 Geo. V., c. 71, a separate school board might "impose and levy school rates and collect school rates and subscriptions," and might appoint collectors for collecting the school rates or subscriptions. Under subsection 1 of section 70:—

A municipal council, if so requested by the board at or before the meeting of the council in the month of August in any year, shall, through their collectors and other municipal officers, cause to be levied in such year, upon the taxable property liable to pay the same, all sums of money for rates or taxes imposed thereon in respect of separate schools.

It was held by the Court of Appeal that the separate school board should impose the rates, and that the effect of subsection 1 of section 70 was merely to compel the municipal council, if requested, to collect those rates.

I repeat that we have not before us the concrete question as to whether a municipal council in Ontario has or has not in any particular case levied rates. From a perusal of these statutory provisions, it is apparent that in such a case it would be necessary carefully to consider the nature of the litigation and the context of the applicable legislation in which the words "levy" or "levied" appear. On this Reference, I take it that the questions submitted refer to the powers of the councils to impose assessments, taxes and charges and not to their powers, or those of the corporations acting through their officers and agents, to compel payment of these taxes; and I so treat the matter, and my answers are given upon that basis.

I see nothing to prevent the ordinary procedure being adopted with reference to these properties, that is, for the assessors to enter them on the assessment roll and the countries concerned as owners thereof; and for the collector's roll to be prepared and for the proper municipal authorities to enter in that roll the amount of taxes either for general or special rates or assessments; and for the tax collector to send a notice in the usual form showing the amount of

(1) (1914) 30 O.L.R. 367.

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taxes. The foreign states may choose to pay all or part of these sums or "as a matter of international courtesy" the Government of Canada may continue to pay them or may decide to pay part. A member of a Minister's staff may presumably enter into a lease of premises and agree to pay rent, although, if disputes arise, the landlord may find himself in difficulties as did the landlord in *Engelke* v. *Musmann* (1). This problem does not, of course, arise here, but neither, in my view, does the question as to whether the tax collector might, in the event of non-payment of any part of the taxes, seize goods under section 114 of *The Assessment Act* or as to whether the foreign states could be sued for the taxes or as to whether the lands themselves could be sold for taxes. When these questions arise they must be decided under those rules of international law that have become part of the domestic law of this country. (*Chung Chi Cheung* v. *The King* (2)).

As between the Dominion and foreign governments it is a matter of arrangement as to what assessments, taxes or charges are to be paid. At p. 1348 of Volume II of Diplomatic and Consular Laws and Regulations by Feller and Hudson (1933) is a "Circular Instruction from the Secretary of State to American Diplomatic Officers" dated November 9th, 1928. This instruction contains the following paragraph:

> Property in the District of Columbia owned by foreign governments for Embassy and Legation purposes is exempt from general and special taxes or assessments. Property owned by an Ambassador or Minister and used for Embassy or Legation purposes is exempt from general taxes but not from special assessments for improvements. The payment of water rent is required in all cases, as this is not regarded as a tax but the sale of a commodity.

It will be noticed that the reference is to the District of Columbia, which, as is well known, was originally part of the State of Maryland, but which was ceded by that State to the Congress of the United States. A reference to page 233 of Volume I of the same book indicates that a different rule may apply in the case of the Union of South Africa. Whatever may be the ultimate result of the inclusion in the assessor's rolls and collector's rolls of the properties referred to as owned by the foreign states and of the sending of the tax notices, there is nothing, in my opinion, to prevent those steps being taken.

(1) [1928] A.C. 433. (2) [1939] A.C. 160, at 167.

The situation as to the properties of His Majesty the King in right of the United Kingdom and of His Majesty in right of Australia is entirely different. The relevant part of section 4 of *The Assessment Act* provides:

> 4. All real property in Ontario and all income derived, whether within or out of Ontario, by any corporation, or received in Ontario on behalf of any corporation, shall be liable to taxation, subject to the following exemptions:
>
> 1. The interest of the Crown in any property, including property held by any person in trust for the Crown, or in trust for any tribe or body of Indians, but, in the latter case, not if occupied by any person who is not a member of a tribe or body of Indians.

By clause (j) of section 32 of *The Interpretation Act,* R.S.O. 1937, c. 1, "The Crown" means the Sovereign of Great Britain, Ireland and the Dominions beyond the Seas for the time being. By section 23 of *The Assessment Act,* every assessor is to prepare an assessment roll in which he shall set down in separate colums:—

> Column 2. Name (surname first) and post office address and rural route mail number of taxable persons (including both the owner and tenant in regard to each parcel of land, and persons otherwise taxable) or person entitled to be entered on the roll as a farmer's son.
>
> Column 17. Total amount of taxable land.
>
> Column 19. Total value of land exempt from taxation or liable for local improvements only.

Section 4 appears to render non-assessable for general or special rates or local improvements the lands mentioned as belonging to His Majesty either in right of the United Kingdom or in the right of Australia, and in fact to prohibit the inclusion of those lands in the assessment roll as "taxable".

In my opinion, therefore, it is within the powers of the Council of the Corporation of the City of Ottawa to levy rates on properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America and Brazil, respectively, and it is within the powers of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on property owned and occupied by the Government of the United States of America as the Legation of the United States in Rockcliffe Park; but that it is not within the powers of the Council of the Corporation of the City of Ottawa to levy rates on property in Ottawa owned and occupied by His Majesty in right of the United Kingdom as the office and residence of the High Commissioner for the United

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Kingdom, or on property in Ottawa owned and occupied by His Majesty in right of Australia as the residence of the High Commissioner for the Commonwealth of Australia.

HUDSON J.—In this reference by His Excellency the Governor General in Council, we are asked to give our opinion in respect to the right of two municipal corporations in Ontario to levy rates on several properties within those respective municipalities.

In what I have to say I shall assume that the words "levy rates" should be taken in their widest acceptation, that is, the imposition and collection of taxes for municipal purposes.

Under the *British North America Act,* section 92, paragraph 8, the province is given exclusive jurisdiction to make laws in relation to municipal institutions in the province. This carries with it the power to impose taxes for the purpose of carrying on the business of municipal institutions.

The taxation so imposed must be within the general provincial powers, that is: first, it must be direct taxation within the province as provided in section 92, paragraph 2, and secondly, it is subject to section 125 of the Act:—

> No lands or property belonging to Canada or any Province shall be liable to taxation.

Both the municipalities involved are in the Province of Ontario and their powers of taxation are defined in the *Assessment Act* of Ontario, R.S.O. 1937, chapter 272. By section 4 it is provided:—

> 4. All real property in Ontario * * * shall be liable to taxation, subject to the following exemptions:

The first exemption is:—

> (1) The interest of the Crown in any property, including property held by any person in trust for the Crown, * * *

There follow after this a very large number of exemptions, none of which has any relation to the present inquiry.

The exemption from taxation of Crown lands in subsection 1 of section 4 would apply to those of the Crown not only in the right of the Province of Ontario but also of the Dominion of Canada and all other parts of the British Dominions. Reference here might be made to *Secretary of State for War* v. *Toronto* (1), and *Secretary of State for War* v. *London* (2).

(1) (1863) 22 U.C.Q.B. 551. (2) (1864) 23 U.C.Q.B. 476.

This being so, the properties owned by and occupied for His Majesty in the right of the United Kingdom as the office and residence of the High Commissioner of the United Kingdom and the property owned and occupied by His Majesty in the right of the Commonwealth of Australia as the office and residence of the High Commissioner for Australia, are both exempt from taxation.

This position was not seriously contested on behalf of the City of Ottawa, nor on behalf of the Province of Ontario.

Questions (ii) and (iii) should, therefore, be answered in the negative.

We next come to the larger and more difficult question as to whether or not the municipalities have the power to impose taxes for municipal purposes on properties owned and occupied as legations of governments of foreign countries and, if so, whether there are any limitations thereto.

It should first be stated that there is no legislation of Canada or of Ontario granting any privileges or immunities in respect of such legations, so that, if any exist, it must be by virtue of some general principle of international law or of Imperial legislation having the force of law in Ontario.

Separate diplomatic representation for and to Canada was not contemplated when the *British North America Act* was passed and there is no provision therein which allots to the Dominion as against the provinces any special powers applicable thereto.

However, in *Attorney-General for Canada* v. *Attorney-General for Ontario* (1), it was held by the judicial Committee that although the Executive in Canada was now competent to enter into treaties with foreign countries, yet, in the words of Lord Atkin, at p. 352:—

> no further legislative competence is obtained by the Dominion from its accession to international status, and the consequent increase in the scope of its executive functions.

And again:—

> There is no existing constitutional ground for stretching the competence of the Dominion Parliament so that it becomes enlarged to keep pace with enlarged functions of the Dominion Executive. If the new functions affect the classes of subjects enumerated in s. 92, legislation to support the new functions is in the competence of the Provincial Legislatures only. If they do not, the competence of the Dominion Legislature is declared by s. 91 and existed ab origine. In other words, the Dominion

(1) [1937] A.C. 326.

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cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.

This statement is *a fortiori* applicable to the question of diplomatic immunities.

I think that the province would be bound to recognize the status of diplomats, but not necessarily bound to accord them any privileges in matters falling within provincial legislative jurisdiction under section 92 of the *British North America Act*.

We must then consider the extent of immunities to which diplomatic representatives and legations are entitled under the general principles of international law or the statute law of England and which, if any, such immunities form part of the law of the Province of Ontario.

Westlake's International Law, Part 1, at p. 277, gives a statement of the views prevalent among English lawyers in the year 1910:

> It is generally admitted that a diplomatic person is exempt from the territorial jurisdiction on engagements contracted by him either in his official capacity, or in a purely private as distinguished from a mercantile or professional capacity, and that so much of his property, movable or immovable, as is necessary to his dignity and comfort cannot be seized for any debt. But opinions and the practice of courts differ as to points beyond these, and since in such circumstances no international agreement can be asserted the question is one for national law, on which we cannot here enter into details. It is enough to say that in England the widest views as to diplomatic immunity are adopted. The st. 7 Anne, c. 12 (This act was passed in consequence of the ambassador of the Czar being arrested, and has always been considered in England as declaratory and not innovating), which is the most formal document we have on the subject, declares the goods of an ambassador or other public minister without limitation to be incapable of distraint or seizure, and makes no exception on the ground of trade to his immunity from suit, but only excludes from the benefit of the act any person "within the description of any of the statutes against bankrupts who shall put himself into the service of any such ambassador or public minister." And though in one case it seems to have been thought, somewhat doubtingly, that a foreign minister who engages in commercial transactions may be made a nominal defendant to a suit "merely for the purpose of ascertaining the liability of the other defendants," no attempt being made to enforce against him any judgment which may be obtained, a later case decides against that view. Again, although Wheaton says that "the hotel in which [a foreign minister] resides, though exempt from the quartering of troops, is subject to taxation in common with the other real property of the country, whether it belongs to him or to his government", yet it has been held in England that the payment of local rates cannot be enforced by suit or distress against a member of a mission, and the same would no doubt be held in the case of national taxes.

The exact language of the material sections of the statute of 7 Anne is as follows:

III. And to prevent the like insolences for the future, be it further declared by the Authority aforesaid, that all writs and processes that shall at any time hereafter be sued forth or prosecuted, whereby the person of any Ambassador, or other public Minister of any foreign Prince or State, authorized and received as such by Her Majesty, her Heirs or Successors, or the domestic, or domestic servant of any such Ambassador, or other public Minister, may be arrested or imprisoned, or his or their goods or chattels may be distrained, seized, or attached, shall be deemed and adjudged to be utterly null and void to all intents, constructions, and purposes whatsoever.

IV. And be it further enacted by the Authority aforesaid, that in case any person or persons shall presume to sue forth or prosecute any such writ or process, such person and persons, and all attornies and solicitors prosecuting and soliciting in such case, and all officers executing any such writ or process, being thereof convicted, by the confession of the party, or by the oath of one or more credible witness or witnesses, before the Lord Chancellor, or Lord Keeper of the Great Seal of Great Britain, the Chief Justice of the Court of Queen's Bench, the Chief Justice of the Court of Common Pleas for the time being, or any two of them, shall be deemed violators of the laws of nations, and disturbers of the public repose, and shall suffer such pains, penalties and corporal punishment, as the said Lord Chancellor, Lord Keeper, and the said Chief Justices, or any two of them shall judge fit to be imposed and inflicted.

In the *Cristina* (1), it was said by Lord Wright, at p. 506, quoting with approval a decision of Brett, M.R., in 5 P.D. at 214 (2):

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.

In the case of *Chung Chi Cheung* v. *The King* (3), it was said by Lord Atkin at p. 175:

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

Now, how far can it be said that this forms part of the law of Ontario? In the above mentioned case of *Chung Chi Cheung* (3), it was said by Lord Atkin at p. 168:

(1) *Compania Naviera Vascongado* v. *S.S. Cristina,* [1938] A.C. 485.

(2) *The Parlement Belge,* (1880) 5 P.D. 197.

(3) [1939] A.C. 160.

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The Courts acknowledge the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and, having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals.

It would appear that the Statute 7 Anne is in force in Ontario. The 1897 revision of Ontario Statutes was prepared by a Board of Commissioners composed of many of the most eminent judges of Ontario under the chairmanship of Chancellor Boyd. Schedule "C" showing Imperial Acts and parts of Imperial Acts relating to property and civil rights appearing to be in force in Ontario by virtue of Provincial Legislation which are not repealed, revised or consolidated, seems to have been indirectly accepted by chapter 13 of the Statutes of Ontario, 1902, sections 4 and 14.

The Statute of Anne mentions only ambassadors and domestic servants but, as it embodies what was a part of the common law, the principle has been held to extend to all other diplomatic representatives.

In 6 Halsbury's Laws of England, p. 507, the note is:

> The Diplomatic Privileges Act, 1708 (7 Ann. c. 12), s. 4, provides for the punishment of all persons and their attorneys and solicitors who take any proceedings in contravention of the Act. The immunity conferred by the statute, while professing merely to secure the persons and property of public ministers against the process of the Courts, does in fact confer upon them complete freedom from interference. Thus, the exterritoriality or inviolability of a public minister's house—as to the extent of which writers on international law differ considerably—is safeguarded by the fact that the minister is not amenable to the jurisdiction of the Courts in respect of his actions.

It is further said in the same passage of Halsbury:

> A public minister's immunity as regards rates and taxes, although deducible from the general principles as to his freedom from taxation which are sanctioned by international usage, is sufficiently safeguarded in English law by the fact that no action can be brought against him to enforce payment. (*Parkinson* v. *Potter* (1)).

In the *Parkinson* case there was an express provision in a statute imposing the liability for rates or assessments on the landlord in cases where the premises were occupied by representatives of foreign governments entitled to immunity. It should be observed that at that time aliens could not own land in England, so that premises occupied

(1) (1885) 16 Q.B.D. 152.

by foreign representatives were always rented from owners of the freehold.

It must, then, be concluded that a court would be bound to hold that in Ontario no action could be proceeded with against any foreign sovereign or state or its diplomatic representatives who pleaded immunity, in respect of taxes imposed by municipal corporations, and the same rule would apply to any proceedings in court calculated to disturb their occupation of the land.

But there is another side to the matter. The immunity or privilege is a privilege from action or molestation. It does not destroy liability. This is illustrated in the case of *Dickinson* v. *Del Solar* (1). There, a Peruvian diplomat while driving a motor car negligently injured the plaintiff. The defendant was insured against accidents of that sort and claimed indemnity from the insurance company. The insurance company denied liability on the ground that their policy only protected against liability of the defendant and, as the defendant was a member of the Peruvian legation, he was immune from legal process. The action was tried before Lord Chief Justice Hewart. He said at p. 380:

> Diplomatic agents are not, in virtue of their privileges as such, immune from legal liability for any wrongful acts. The accurate statement is that they are not liable to be sued in the English Courts unless they submit to the jurisdiction. Diplomatic privilege does not import immunity from legal liability, but only exemption from local jurisdiction.

See also *Taylor* v. *Best* (2), and *In re Suarez* (3).

A diplomatic representative often incurs liability under contracts. If he pleads immunity, these cannot be enforced as long as the privilege continues, but he still owes the debt.

The tax here in question is imposed on the land for the purpose of maintaining the community life and amenities shared by the inhabitants of the municipality, including the occupants of these particular properties, with all citizens. It is in no way a tax enuring for the benefit of Canada as a state.

The Legislature of Ontario, which is supreme in the matter of municipal institutions and property and civil rights in the province, has not seen fit to exempt the land used for legations from municipal taxes.

(1) [1930] 1 K.B. 376. (2) (1854) 14 C.B. 487.
(3) [1918] 1 Ch. 176.

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The Statute of 7 Anne had no application to the land. At the time it was passed and for long afterwards, alien ownership of land was not permitted by the law of England: see Blackstone's Commentaries, 1829, Ed., Vol. 1, p. 371.

In cases like *Parkinson* v. *Potter* (1), *supra,* the diplomatic representative held as tenant and was immune from personal action, but the owner was liable to the local authority and the taxes were collected from him.

The Dominion has the right to give a status to diplomatic representatives, but I cannot see that the granting of such status carries with it immunities from provincial laws beyond those which are recognized by the Provincial Legislature, as has been done, in my view, to the extent of immunity from personal liability.

The tax when imposed creates a lien and charge on the land. There are many difficulties in the way of enforcement as long as the privilege continues but, as we have reason to know, diplomatic relations may be severed, or the foreign state or person representing such state may desire to dispose of the land; then the lien might well become effective. Again, a substantial part of municipal taxation is imposed to pay for the services rendered by the municipality, such as water, sewerage, etc., which the municipality would have a right to withhold until taxes are paid.

If I am correct in these views, this leaves the matter in an unsatisfactory position. It arises because Canada's advance to international status was not foreseen when the *British North America Act* was passed. I take it that the purpose of this Reference is to clarify the legal situation so that the proper authorities may make the necessary adjustments between themselves in such a way as to comply with the necessities of international comity. What I have said perhaps does not clarify the situation but does show the legal difficulties involved in defining the functions of the Dominion as against the province. In conclusion, I would point out that in England

> It is usual for the Treasury to make an allowance to the rating authority of the district in which the immune premises are situate, in order to lessen the loss to the rates by reason of the immunity.

(6 Halsbury's Laws of England, p. 508).

My answers to the questions submitted are as follows:

(1) (1885) 16 Q.B.D. 152.

To question (i) my answer is "Yes", meaning thereby that the council of the municipality can impose such taxes, but this is qualified by the fact that assistance of the courts would not be given to enforce payment so long as the diplomatic immunity continued.

To question (ii) my answer is "No".

To question (iii) my answer is "No".

To the question as to the right of the Council of the Corporation of the Village of Rockcliffe, my answer is the same as to question (i).

TASCHEREAU J.—In the past, it has been the practice of the Councils of the City of Ottawa and the Corporation of the Village of Rockcliffe Park, to levy rates on property owned and occupied by His Majesty the King, in right of Governments of other parts of the Commonwealth, but as a matter of international courtesy, the taxes were paid by the Government of Canada.

His Excellency the Governor General has, therefore, referred to this Court the following questions:—

Is it within the powers of the Council of the Corporation of the City of Ottawa to levy rates on

(i) properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America and Brazil, respectively, or

(ii) on property in Ottawa owned and occupied by His Majesty in right of the United Kingdom as the Office and Residence of the High Commissioner for the United Kingdom, or

(iii) on property in Ottawa owned and occupied by His Majesty in right of Australia as the Residence of the High Commissioner for the Commonwealth of Australia,

and is it within the powers of the Council of the Corporation of the Village of Rockcliffe Park to levy rates on property owned and occupied by the Government of the United States of America as the Legation of the United States in Rockcliffe Park?

In the exercise of powers granted by the *British North America Act,* the Ontario Legislature has passed laws providing for the assessment and taxation of all real property.

Among the exemptions mentioned in the *Assessment Act* is the following:—

The interest of the Crown in any property, including property held by any person in trust for the Crown, * * *

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The *Interpretation Act* says:—

> "His Majesty", "Her Majesty", "The King", "The Queen", or "The Crown", shall mean the Sovereign of Great Britain, Ireland and the Dominions beyond the Seas for the time being.

These two references to the Statutes of Ontario are sufficient, without further comment, to allow me to give a negative answer to interrogatories (ii) and (iii). The Statute clearly creates an exemption in favour of any property belonging to the Crown.

The situation, however, as to properties in Ottawa owned and occupied as Legations by the Governments of the French State, the United States of America, and Brazil, for which there is no specific exemption, appears to be quite different, and the question must be approached from another angle. Its solution would offer no difficulty whatever in a unitary State where there is no duality of authority, as we have here as a result of the attribution of powers made by the *British North America Act* to the Federal Government and to the various Provinces of Canada.

Of course, the rapid expansion of international relations between Canada and the other countries of the world, could not be foreseen in 1867, but it is common ground that external affairs is a matter which is exclusively under Federal control, and it is in pursuance of these rights that the Canadian Government have exchanged ministers with foreign countries.

I quite agree, that if the Federal authorities contract obligations with foreign countries, their competence does not "become enlarged to keep pace with enlarged functions", and as Lord Atkin said in *Attorney-General for Canada* v. *Attorney-General for Ontario* (1):—

> In other words, the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.

But in that case the questions referred asked whether the *Weekly Rest in Industrial Undertakings Act,* the *Minimum Wages Act,* and the *Limitation of Hours of Work Act,* were *ultra vires* of the Parliament of Canada. These laws had been enacted by the Parliament of Canada to

(1) [1937] A.C. 326, at 352.

give effect to draft conventions adopted by the International Labour Organization of the League of Nations, and were found to be *ultra vires,* in that the legislation related to matters assigned exclusively to the Legislatures of the Provinces.

It appears to me that this decision of the Judicial Committee has no application in the present case, where no legislation has been enacted by Parliament, and no acts done which can convey the idea that there is from its part any attempt to deal with municipal taxation, which is a matter exclusively for provincial concern.

The question is whether under International Law, a property belonging to a foreign State may be assessed for municipal purposes. A negative answer would in no way clothe the Dominion with any "enlarged competence", and the denial to the Provinces and the Municipal authorities of the right to levy such rates, would not extend the field of federal legislative powers.

I have come to the conclusion that practically in all the leading countries of the world, it is a settled and accepted rule of International Law, that property belonging to a foreign Government, occupied by its accredited representative, cannot be assessed and taxed for state or municipal purposes.

The Minister himself, is not, as a rule, subject to the authority of a foreign power, and cannot be impleaded in the courts of the country where he is sent. His immunity from legal process extends to the property of the State, which is exempt from all form of taxation. It is with this in mind that must be read the *Assessment Act* of Ontario.

I had the advantage of reading the reasons for judgment of the Chief Justice. He has made a thorough review of the jurisprudence and of the opinions of the text-writers on the subject, and with what he has said, I entirely concur.

I would answer interrogatory (i) in the negative. To the interrogatory relating to the Corporation of the Village of Rockcliffe Park, my answer is also in the negative.