be in substance a grant of financial assistance, achieving no more and not purporting to refund taxation; it was only by invoking the co-operation of another legislative body that the taxes were refunded.

The question whether s. 6 of the W.I.A.A. was in substance a grant of financial assistance to a State deserves close consideration. By its title it was, but that is not conclusive. It is arguable that under s. 6 the recipient of assistance is not the State but the wheat-growers. But s. 96 enables Parliament to impose conditions, and this may be a sufficient answer.

An appeal by the defendant was dismissed by the Privy Council.[11] Their Lordships took the same general view as the majority, both of the relation between s. 51 (ii) and s. 96, and of the real character or substance of the legislation in question. But they nevertheless agreed with the dissentient that the Commonwealth cannot so use its powers under s. 96 so as altogether to nullify the prohibition contained in s. 51 (ii). On the question of severability they expressed no opinion.

—H. L. PERKINS.

11. [1940] 3 All E.R. 269.

RECOGNITION IN INTERNATIONAL LAW.[1]

Haile Selassie v. Cable & Wireless, Ltd.[2]

The Italian annexation of Ethiopia has led to some interesting decisions by English Courts involving points of international law.

Haile Selassie v. Cable & Wireless, Ltd. raises questions relating both to the impleading of a foreign sovereign and to the legal status of sovereigns *de facto* and *de jure*. In this case the exiled Emperor of Ethiopia, who at that time was still recognized by the British Government as *de jure* sovereign of Ethiopia, claimed from the defendant company a balance due under a concessionary contract entered into in 1934 with a department of the Ethiopian government representing the plaintiff in his capacity of sovereign of Ethiopia. The defendant company admitted the sum due from them, but produced letters from the Italian Ambassador in London in which the Italian government claimed the money and also refused to have its claim determined in the English Courts. The defendants argued that the King of Italy, by virtue of his recognition as *de facto* sovereign of Ethiopia, had acquired the right to the money, and that therefore payment to Haile Selassie would not discharge the debt. Bennett J. declined to express an opinion on the question of law thus raised. He held that the action must be stayed because "the right of the plaintiff to recover judgment cannot be determined without determining whether the claim put forward by or on behalf of His Majesty the King of Italy is well founded."

The plaintiff appealed against this decision, contending that property in regard to which a foreign sovereign was entitled to claim immunity must be actually or notionally in his possession. The authorities upon

1. The writer gratefully acknowledges the assistance he has derived in preparing this note from discussion with the class in International Law.
2. [1938] Ch. 545, 839; [1939] Ch. 182.

the question of impleading a foreign sovereign had recently been considered by the House of Lords in *The Cristina*.[3] In that case Lord Atkin stated as follows the two propositions of international law upon which the doctrine of immunity is based : " The first is that the courts of a country will not implead a foreign sovereign. . . . The second that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control."

The first proposition did not apply to this case, as the King of Italy was not a party to the proceedings, and an action in contract was *in personam*, not *in rem*. The second proposition was also inapplicable, as there was no " proved or admitted proprietary or possessory right " belonging to the King of Italy at stake. As Greene M.R. expressed it, " where property which is not proved or admitted to belong to or to be in the possession of a foreign sovereign or his agent is in the possession of a third party, and the plaintiff claims it from that third party, and the issue in the action is whether the property belongs to the plaintiff or the foreign sovereign, the very question to be decided is one which requires to be answered in favour of the sovereign's title before it can be asserted that that title is being questioned." In other words a foreign sovereign must establish his title to a chose in action before he can claim immunity. The action was therefore remitted to Bennett J. for a decision on the merits.

The question which now fell to be decided was stated as follows : " Does the fact that the Italian Government has been and is recognized by the British Government as a *de facto* government of Ethiopia vest in the Italian Government the right to sue for and obtain judgment in an English Court for a debt formerly due to and recoverable by the plaintiff as the sovereign authority of Ethiopia, the debt being due to the plaintiff as Emperor of Ethiopia, and the British Government recognizing the plaintiff as the *de jure* Emperor of Ethiopia ? "

The legal effect of *de facto* recognition was discussed in two recent cases, *The Bank of Ethiopia v. The National Bank of Egypt and Liguori*,[4] and *Banco de Bilbao v. Sancha*.[5] It was established in those cases that recognition of a *de facto* government extends to all acts in relation to persons or property in the territory which the authority is recognized as governing in fact. But there is was the validity of acts committed within the territory of the *de facto* jurisdiction which were in question, whereas this case was concerned with the title to a chose in action, a debt recoverable in England. Bennett J. held, therefore, that there was no English authority applicable to these facts. But in his view the title to sue for this debt had been vested in the plaintiff as sovereign monarch of Ethiopia, and the occupation and annexation of Ethiopia by the Italians should not, on principle, have the effect of divesting him of the title to sue.

The defendant appealed against this decision, but before the hearing in the Court of Appeal the British Government granted recognition to the King of Italy as *de jure* sovereign of Ethiopia. The Court of Appeal (Sir Wilfrid Greene M.R., Scott and Clauson L.JJ.) held that in the circum-

3. [1938] A.C. 485.
4. [1937] Ch. 513.
5. [1938] 2 K.B. 176.

stances the right to sue had passed from the plaintiff and become vested in the King of Italy, and that for the purpose of succession to property such recognition dated back to the time when the British Government first recognized that the new sovereign had acquired a *de facto* title. The decision of Bennett J. that this succession to property in England does not take place when the old sovereign is still recognized *de jure* and the new sovereign as only a *de facto* government of the territory, was neither affirmed nor impugned by the Court of Appeal.

It is submitted, however, that such a decision is out of tune both with political realities and with the principle on which the earlier cases were decided. For the defendant company, the main argument was that it had contracted with Haile Selassie not in his personal but in his political capacity, as representing the territorial community of Ethiopia; and that (as the British Government had recognized) he had in fact ceased to represent the territorial community of Ethiopia. Bennett J. rejected this argument. He accepted the principle, laid down in dicta of Lord Cairns in *United States of America v. Wagner*,[6] that in a monarchical form of government the public property of the State is deemed in English law to be vested in the monarch individually and not in a representative capacity. But the issue in that case was whether a Republic could sue in the English Courts in its own name, or only in the name of its President. Lord Cairns drew a distinction between republics and monarchies. But this distinction does not appear to conclude a case like that under discussion, where the whole question is in which of two monarchs the public rights of the State are vested.

Further, it is submitted that the true principle to be derived from the recent cases is that the limitation of recognition to recognition *de facto* deprives the *de facto* sovereign of none of the legal attributes of sovereignty. It seems to follow that the continued recognition of a *de jure* sovereign as well must be regarded as a merely political act, without juridical consequences. In this view, the recognition by His Majesty's Government that the King of Italy had **in fact** become sovereign of Ethiopia would of itself operate to preclude Haile Selassie from maintaining in the English courts a claim as sovereign.

—V. H. PARKINSON.

6. (1867) L.R. 2 Ch. 582.

LOTTERIES AND INTER-STATE FREE TRADE.[1]

R. v. Connare, Ex parte Wawn[2]; *R. v. Martin, Ex parte Wawn.*[3]

Two recent High Court decisions on the lottery legislation in New South Wales constitute an interesting illustration of present trends in the interpretation of s. 92 of the Commonwealth Constitution.

The Lotteries and Art Unions Act, 1901-1929 (N.S.W.) purported to prohibit the selling, or offering for sale, or accepting any money in respect of the purchase, of any ticket in a lottery. A subsequent Act legalized

1. The writers gratefully acknowledge the assistance they have derived in preparing this note from discussion with the Honours class in Constitutional Law II.
2. (1939) 61 C.L.R. 596.
3. (1939) 62 C.L.R. 457.