conferred on him by his domicile of origin (i.e. the domicile of his father at his birth) will be recognised by the courts of England, and, if that legitimacy be established, the validity of his parents' marriage should not be considered a relevant subject for investigation.

His Lordship relied upon two cases dealing with legitimation—*In re Goodman's Trust*[6] and *In re Andros*[7]—and indeed there seems to be no reason in logic or authority why he should not have done so.

The decision in *Shaw v. Gould*[8] still presented a serious obstacle, since the present case was one of legitimacy, not legitimation. It is submitted, with respect, that Romer J. solved the problem by refusing to recognise its existence. He said in effect that the over-riding importance of the validity of the marriage according to English rules in the earlier case was " a matter rather of assumption by the House than one of direct decision "[9]. He also pointed out that " the claims under consideration were not confined to personal estate in England, for there was a claim to English real estate as well ; and this may have had some effect on the line which was adopted both in the argument and in their Lordships' opinions."[10]

One might be excused for thinking that an " assumption " by the House of Lords, with only one of their number expressing any doubt at all on the point, was a fairly good indication of the actual state of the law.

It now remains to be seen whether other judges sitting alone, not to mention courts higher in the hierarchy, will follow the lead of Romer J. The future is obscure in this matter, as it is in so many other aspects of the comparatively new branch of the law which we know as Private International Law.

R. M. NORTHROP.
A. E. WOODWARD.

6. (1881) 17 Ch. D. 266.
7. (1883) 24 Ch. D. 637.
8. *supra*.
9. [1948] 1 Ch. 79, at 91.
10. [1948] 1 Ch. 79, at 91.

## PUBLIC INTERNATIONAL LAW: IMMUNITY OF FOREIGN STATES.

### *Krajina v. The Tass Agency and Another.*[1]

Once it was established that the Tass agency, the first defendant in this libel case, was a Department of the Soviet State, it was inevitable that it would succeed in its claim to immunity. There is therefore nothing surprising in the decision of the Court of Appeal (Tucker, Cohen and Singleton L.JJ.) in affirming the decision of the Master, setting aside the service of the writ on Tass. However the case does raise several interesting questions.

In the first place it was suggested by the plaintiff that, if Tass were shewn to be an entity distinct from the Soviet State, it must follow that it could not claim immunity. Neither Tucker L.J. nor Cohen L.J. was

1. [1949] 2 All E.R. 274.

prepared to concede this. However it is submitted that there is much to commend the suggestion.[2] It is clear that an individual, although the servant of a foreign State,[3] cannot claim immunity. There seems no good reason why a foreign corporation, distinct from the foreign State, should be in a better position. Of course it would still be necessary to shew that the defendant was really a distinct entity, and not merely a State department on which had been conferred some of the rights and privileges of a juridical entity.

Secondly, it was argued that even though Tass was a department of the U.S.S.R. without a separate legal existence, the nature of its activities was such as to deprive it of sovereign immunity. The Court of Appeal was bound to reject this contention in view of its own earlier decisions in the *United States Shipping Board Case*[4] and in *The Porto Alexandre*.[5] However it may be doubted whether the decision of the House of Lords would be any different. It is certainly recognised that with the extension of State activity in recent years the sphere of State immunity has been increased to an undesirable extent. It is sometimes said that a State should not be able to claim immunity in respect of its non-sovereign activities; but this distinction between sovereign and non-sovereign functions is a very doubtful one.[6] A more useful line of distinction although it, too, is not always easy to apply, is between activities which are directed to profit making and those which are not. Various Continental States have applied this rule in one of two ways. Sometimes entry into commercial transactions is treated as raising an implication that immunity is waived, or alternatively no immunity is enjoyed in relation to such transactions.

It is submitted, however, that the House of Lords would not be free to adopt either of these views. It seems to be well settled that, so far as English law is concerned, a waiver of immunity can be effective only if made at the time jurisdiction is sought to be exercised. A foreign Sovereign or State cannot be estopped from denying his sovereign character.[7]

Although, in *The Christina*,[8] various members of the House of Lords reserved the question whether *The Porto Alexandre* was correctly decided, there is very little in the judgments which would support a claim that a Sovereign's immunity from actions *in personam* is dependent on the nature of the transaction giving rise to the action. All the members of the House of Lords in that case were directing their words to the question of immunity in relation to actions *in rem* and there was a suggestion that a foreign State would not be completely immune from actions *in personam*.

A. L. T.

2. It received the tentative approval of Singleton L.J. (at p. 285).
3. Provided of course that he is not a diplomat. See *Engelke v. Musmann*, [1928] A.C. 433.
4. *Compania Mercantil Argentina v. United States Shipping Board*, (1924) 131 L.T. 388.
5. [1920] P. 30.
6. Thus the U.S. Supreme Court in *Berizzi v. Pesaro*, 271 U.S. 562, held the conduct of a commercial shipping enterprise to be a public purpose. If this tendency be followed, then virtually all functions are public functions. The more normal result of the application of the test is to divide governmental activity between those functions which were formerly carried on by governments and those which were not. See Friedmann (1938) *B.Y.I.L.* 118, at p. 128.
7. *Mighell v. Sultan of Johore*, [1894] 1 Q.B. 149; *Duff Development Co. Ltd. v. Government of Kelantan*, [1924] A.C. 797.
   For this reason, the fact that Tass had acted as an ordinary business in filing particulars pursuant to the *Business Names Act* 1916 could not be treated as a waiver of immunity.
8. [1938] A.C. 485.