diction by submission and concluded that there is no warrant for the view that personal presence is the only way in which an individual may render himself amenable to the jurisdiction. Submission to the jurisdiction may be constituted where the defendant even though remaining outside the jurisdiction is represented by solicitors and counsel and contests on its merits a particular piece of litigation.

E.I.S.

PUBLIC INTERNATIONAL LAW

Retroactive Operation of Recognition

When governmental recognition is accorded to a new state or a new government of an existing state, it is a principle of British law that such recognition is retroactive to the time when the new government first established control over the state.[1] Does this mean that all acts of the previously recognised government of the state concerned during that period covered by the retroactive operation of the recognition become null and void in the eyes of British law? This question had never been directly raised before a British court until the case of *Boguslawski v. Gdynia-Ameryka Linie*.[2]

The issue in that case was the validity or invalidity of an agreement made by the Polish Government in London in 1945 after the establishment of the new Government in Poland but before the new Government's recognition by the United Kingdom. The Foreign Secretary's certificate to the court stated that His Majesty's Government recognised the Polish Government having its headquarters in London as being the Government of Poland up to and including midnight of July 5-6, 1945, and as from that point of time recognised the Polish Provisional Government of National Unity as being the Government of Poland, and ceased to recognise the Polish Government in London. One view of this certificate taken by the Court of Appeal was that it meant that recognition in this case could have no retroactive operation because the new Government was recognised only as from a certain time, up to which time the old government continued to be recognised; in other words, so far as the United Kingdom was concerned, the new Polish Government in Poland was the legal successor of the old Government in London. It followed, in accordance with the ordinary principle of international law, that the acts of the old Government retained full legal force and effect unless and until they were properly rescinded or repudiated by the new Government.

However, the Court went on to consider what would be the effect on the agreement in question if the principle of retroactivity was to be applied to the recognition of the new Polish Government. The Court held that the rule that on recognition all acts, legislative and executive, of the new Government during the "twilight period" between the date of assumption of power and the date of recognition were to be given legal recognition and effect, did *not* mean that 'al'

1 *Aksionairnoye Obshchestvo A M Luther* v. *James Sagor & Co.* [1921] 3 K.B. 532; *Lazard Bros & Co.* v. *Midland Bank Ltd.* [1933] A.C. 289.
2. [1951] 1 K.B. 162

acts of the old and no longer recognised Government during that period were to be invalidated. Otherwise the consequences to persons who had had dealings with the old Government during the "twilight period" would be most serious. It is eminently reasonable that persons ought to be entitled to rely on the continuing recognition accorded by their own Government to a Government with which they propose to transact business. So the Court of Appeal held that the authority of the new Polish Government during the "twilight period" was to be regarded as limited to the area under its *de facto* control, acts done in the United Kingdom by the old Government during that period not being affected by the recognition of the new Government. The principle of retroactivity would thus seem to be based on convenience and expediency, and so must give way in the face of greater convenience or expediency.

The principle of retroactivity of recognition has thus been brought into line with the principles developed in the courts of the U.S.A. In fact, Cohen L.J. specifically followed the American decisions, quoting from the judgment of Stone C.J. in *Guaranty Trust Co. v. United States*,[3] in which he said: "The very purpose of the recognition by our government is that our nationals may be conclusively advised with what government they may safely carry on business transactions and who its representatives are. If those transactions, valid when entered into, were to be disregarded after later recognition of a successor government, recognition would be but an idle ceremony, yielding none of the advantages of established diplomatic relations in enabling business transactions to proceed, and affording no protection to our own nationals in carrying them on."

Immunity of Property of Foreign Government

It is a principle of international law that the property of a foreign Government is immune from all municipal process. In our law this immunity is not based on any claim of title by the foreign Government, but on "possession or control" of the property by it.[4] The extent of this "possession or control" required to support the principle of immunity was considered by the Court of Appeal in *Dollfuss Mieg & Cie v. Bank of England*,[5] and given a very wide interpretation. The Court held by a two to one majority (Evershed M.R. dissenting) that it is wide enough to include the case where the foreign Government is not even a party to the proceedings and the property is in the possession of a bailee from the foreign Government which makes no claim of *title* to the property, and the proceedings are against the bailee *in personam*.

The facts were briefly as follows. Before the war the plaintiff, a French company, bought a number of identifiable gold bars and deposited them in a vault. In 1944 the bars were seized by the Germans and taken to Germany, where they were found by the United States forces in 1945. In 1946 a Tripartite Commission was set up by the Governments of the United Kingdom, the U.S.A., and France to carry out the terms of an agreement between them whereby all the

3. (1938) 304 U.S. 126.
4. *The Cristina* [1938] A.C. 485.
5. [1950] Ch. 333.

gold found in Germany by the allied forces was to be pooled for distribution among the countries participating in the pool in proportion to their respective losses of gold through wrongful removal to Germany. In 1948 the particular bars in question were deposited in the Bank of England under the orders of the Tripartite Commission, the gold being received and held by the bank on behalf of the Governments of the United Kingdom, the U.S.A., and France. At that time the Commission knew that the French company had, or might have, an interest in the bars, and it requested the Bank to set these particular bars aside, which the Bank agreed to do. During the course of the hearing of the appeal it was found that the bars had not in fact been segregated from other gold bars held by the Bank and that some of them had actually been sold by the Bank. In the circumstances the Court held that the bars could no longer be said to be in the possession or control of the depositing Governments and that therefore no claim of immunity from the action by the company for delivery of the bars or damages for their conversion could be established. However, because the matter was one of public importance and had been fully argued and because the facts on which the actual decision proceeded were not before the trial judge, the Court went on to consider what the position would have been if the bars had, as intended, been segregated and held by the Bank as specific chattels in safe custody. It follows, therefore, that the Court's views on this question were strictly *obiter dicta*.

The majority of the Court held that in such a case the bars would have remained in the possession or control of the depositing Governments as those terms were used in the case of *The Cristina*, and that the Bank would have been entitled to claim immunity from the company's claim on the basis of the *de facto* control of the U.S. and French Governments, even though the interest of those Governments was not based on title but simply on a *de facto* possession by finding or seizure. A very interesting suggestion was made by both Somervell L.J. and Cohen L.J.[6] that the rule of immunity in English law ought to depend on reciprocal immunity being accorded by the law of the state on whose behalf the immunity is claimed. Such a principle would accord with the theoretical basis of the immunity rule in International Law, but the point was not argued before the Court of Appeal and it remains to be seen whether the suggestion of Their Lordships will be regarded as consistent with *The Cristina* and other authorities.

R.A.

TORT

Occupiers' Liability

The basis of the duty owing by the invitor which has been the subject of considerable judicial scrutiny during the past two years again produced some litigation in 1950. The decision of the Court of Appeal in *Horton v. London Graving Dock*[1] which was somewhat sketchily noticed in the last issue of this Journal on the issue of the meaning of "unusual danger"[1a] also went to the fundamental question

6. [1950] Ch. at 361, 368.
1. [1950] 1 K.B. 421.
1a. 1 U.O.L.J. No. 2 p. 81.