

**THE STANCROFT:**  
**Attorney General v Owners, etc.,**  
**of cargo ex s.s. Stancroft**

Supreme Court  
Beatty, C.J.  
23 June 1938

*Jurisdiction — sovereign immunity.*

The Attorney General took out a writ for the forfeiture of part of the cargo of the Stancroft as having been carried in contravention of the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936. The Government of the Spanish Republic, after entering an appearance under protest, moved to have the writ set aside, on the ground that the goods were the property of the Spanish Republic, and for an order that the goods be delivered up.

**Held:** As the cargo was the property of a sovereign state, the court had no jurisdiction and the writ and arrest must be set aside.

**Cases referred to in the order.**

*The Cristina*, [1938] 1 All E.R. 719.  
*The Arantzazu Mendi*, [1938] 3 All E.R. 333.  
*Vavasseur v Krupp*, (1878) 9 Ch. D. 351.

## Motion

This was a motion to set aside the writ of summons, on the ground that the action impleaded a foreign state.

The Attorney General (C. Mansel Reece) and A.R. Isola for the Crown.  
D.N. Pritt, K.C., and G.H.C. Bing for the Spanish Government.  
S.P. Triay for Captain Scott.

### 24 June 1938: The following order was read—

The matter before the court is a motion to set aside a writ issued in the above-named case.

The motion reads:

“The Court will be moved on behalf of the Government of the Spanish Republic for an Order that this action, the writ, the service thereof and all subsequent proceedings, be set aside or dismissed and that the goods that form the subject thereof together with the packages or receptacles in which they are contained be delivered up to the Consul General or other proper officer of the Spanish Republic: AND FURTHER TAKE NOTICE that the grounds of this motion are:—

(1) That the said goods and the said packages or receptacles are the property of the Spanish Republic, a foreign Sovereign State in amity with His Majesty, and were taken out of the possession of the said foreign Sovereign at Valencia by servants of His Majesty;

(2) That this action impleads the said foreign Sovereign State;

(3) That the said foreign Sovereign State is unwilling to and does not recognise or sanction the institution or carrying on of this action or submit to the jurisdiction of this Honourable Court in respect thereof.”

The claim on the writ of summons reads:

“The Plaintiff claims to have the articles following, namely, seventeen cases of empty cartridges being component parts of cartridges, one case of empty steel gun shells being component parts of projectiles, and nine aircraft engines together with the packages or receptacles in which they are contained being part of cargo lately carried on board the Steamship “STANCROFT” declared to be forfeited and when forfeited disposed of as the Court may direct for contravening the Merchant Shipping (Carriage of Munitions to Spain) Act 1936.”

An appearance was entered under protest on behalf of the Government of the Spanish Republic as owners of or persons interested in the goods, the subject of this action, without prejudice to an application to set aside the writ or service thereof which they have proceeded to make.

The Government of the Spanish Republic claim that these goods are their property and in support of that claim they have filed affidavits to which no reply has been made. It does not appear to be seriously in dispute that they have established their claim in that respect or that they are a sovereign state within the meaning of international law.

In the recent case of *The Cristina*<sup>1</sup>, Lord Atkin in delivering judgment said that the foundation of the application to set aside the writ and arrest of the ship was to be found in two propositions of international law engrafted into our domestic law which seemed to him to be well-established and beyond dispute.

The first was that the courts of a country would not implead a foreign sovereign, that was, they would not by their process make him against his will a party to legal proceedings.

The second was that they would not by their process whether the sovereign was a party to the proceedings or not seize or detain property that was his or of which he was in possession or control.

In a more recent case, *The Arantzazu Mendi*, reported in the Times of 18 June<sup>2</sup>, the High Court of Justice in England allowed a motion, by the Nationalist Government of Spain for an order that a writ in rem issued by the Republican Government to have possession of the *Arantzazu Mendi*, to be set aside on the ground that the action impleaded the Nationalist Government of Spain which was the de facto government of a large part of Spain and as such was therefore a sovereign state within the meaning of international law was in possession of the vessel by its authorized agents.

In the course of his judgment, Mr. Justice Bucknill said the underlying immunity from legal process "is based on the theory of international comity which induces a sovereign state to respect the independence of another sovereign state".

In the case of *Vavasasseur v Krupp*<sup>3</sup>, Lord Justice Cotton in the course of his judgment said: "none of the Courts in this country have any jurisdiction to interfere with the property of a foreign sovereign, more especially with what we call the public property of the state . . . ." In that case the property was German shells en route to Japan.

The penal clause in the Patent Act as regards forfeiture for infringing patent rights under which the goods were seized appears to be on all fours with the case before this court.

<sup>1</sup> [1938] 1 All E.R. 719.

<sup>3</sup> (1878) 9 Ch. D. 351.

<sup>2</sup> Later reported in [1938] 3 All E.R. 333.

This immunity from legal process does not appear to be affected by penal clauses in our statute law.

As regards that part of the motion in which the court is asked to order that the goods be delivered up to the Consul General or other proper officer of the Spanish Republic.

A complaint was made that the goods had been detained for about a month before arrest. There does not appear to me to be any substance in this complaint.

In one of the affidavits filed it is asserted that the goods were put on a British ship by error. This carelessness on the part of servants of the Spanish Republic has resulted in embarrassment and considerable expense to a friendly power.

International relations frequently have to be modified in accordance with treaty obligations such as those entered into under the Non-Intervention Agreement and in these days of broadcasting shrieks it could not be pleaded that any country was not aware of what nations were signatories to that treaty.

It might well be argued that the authorities are justified in detaining this property which is admitted to be munitions of war until effective guarantees are given that it will not reach Spain until after the termination of the present distressful civil war.

If shipped on a British ship to a Spanish port it would be a contravention of the Merchant Shipping (Carriage of Munitions to Spain) Act of 1936 and if allowed to go by a foreign vessel it would appear contrary to the policy of non-intervention.

That however is a matter for diplomatic action and not for this court.

No order will therefore be made on this part of the application.

The result is that the court has no jurisdiction to deal with the claim on the writ of summons and the writ and arrest is therefore set aside.