relator. The question is whether this election of the mayor as a councillor, he himself acting at the election as returning officer, was valid. Upon the maxim that no one shall be judge in his own cause, I am of opinion that a returning officer cannot be allowed, at the election over which he presides as such returning officer, to return himself. The duties of the mayor of a borough, as returning officer, are not purely ministerial. He has to decide whether the votes are given in proper form, and, from time to time, to determine a variety of questions of considerable nicety, which are sometimes brought afterwards before this Court. He may often, on these occasions, have the opportunity of favouring his own views, and of being judge, so to speak, in his own cause; and therefore the maxim which I have cited applies, unless there be something in the Act which enables that to be done which otherwise could not be done. Sect. 28, when properly examined, does not bear out the construction contended for by the defendant. It enacts merely that a mayor is not to be ineligible as a councillor by reason of his office; not that the mayor, when acting as returning officer, may return himself as a councillor. Sect. 36 gives the means of substituting an alderman, to preside as returning officer at elections, whenever the mayor, from whatever reason, is "incapable of acting," and thus meets the very difficulty which may arise from the mayor being a candidate for election as a councillor. If, while acting as returning officer, he is proposed as a candidate, he is ineligible; just as a sheriff, if proposed as member for his county, would be ineligible, and would be bound, as returning officer, to refuse to receive any votes for himself.

[92] Wightman J. The mayor, being returning officer, has returned himself; and the question is, whether he has the power to do so. It is said that his duty, as returning officer, is simply ministerial. But that is certainly not so. He has to examine the voting papers, and, though he has not to decide upon the qualification of the voters, he has to see that they give their votes in proper form. Many difficult questions, decided by the mayor on these occasions, have come before this Court. All the objections against a returning officer returning himself apply in this case. Sect. 28, which has been relied upon for the defendant, provides only that the mayor shall not be ineligible by reason simply of his being mayor: it gives no power to the mayor, while acting as returning officer, to return himself: and if, while so acting, he is proposed as a candidate, he is clearly ineligible.

Erle J. I am of the same opinion. The rule of law, that a man cannot be judge in his own cause, applies here. The mayor's duty, as returning officer, is not merely a mechanical one; many cases in this Court shew that questions of great difficulty often arise for his decision at these elections, where great artifice is frequently exercised in order to ensure the return of particular candidates. Sect. 28 has been relied on as shewing that the mayor is not disqualified from being elected. But that means, not disqualified simply as mayor: so that, where a borough is divided into wards, he might be elected in the ward where he is not returning officer. But it is clear to me that, while the mayor is acting as returning officer, the statute gives him no power to return himself; and such power would be directly contrary to the general rule of law which I have stated.

[93] Crompton J. I also am of opinion that this election was void. The general rule, that a returning officer cannot return himself, applies to the present case. I do not think that the duty of the mayor, as returning officer, is simply ministerial: he has sometimes to exercise judicial functions of considerable importance. As to sect. 28, it is clear that, though it provides that the office of mayor shall not render a man ineligible as a councillor, it gives no power to the mayor, while acting as returning officer, to elect himself. I rather doubt whether sect. 36, empowering the appointment of a substitute when the mayor is incapable of acting was intended to apply to such a case as this. The mayor is eligible, where he is not returning officer; as, for instance, where a borough is divided into wards, in a ward where he is not returning officer: but here, acting as returning officer, he has returned himself; and the election is void.

Judgment for the Crown.

[94] THE MAGDALENA STEAM NAVIGATION COMPANY *against* MARTIN. Tuesday June 14th, 1859. The public minister of a foreign State, accredited to and received by the Sovereign of this country, having no real property in England, and having done nothing to disentitle him to the general privileges of such public

minister, cannot, while he remains such public minister, be sued against his will, in this country, in a civil action ; although such action may arise out of commercial transactions by him here, and although neither his person nor his goods be touched by the suit.

[S. C. 28 L. J. Q. B. 310 ; 5 Jur. N. S. 1260 ; 7 W. R. 598. Applied, *The Charkieh*, 1873, L. R. 4 A. & E. 89, 93. Referred to, *The Parlement Belge*, 1879-80, 4 P. D. 148 ; 5 P. D. 197. Applied, *Parkinson* v. *Potter*, 1885, 16 Q. B. D. 161 ; *Musurus Bey* v. *Gadban*, [1894] 2 Q. B. 354.]

The declaration alleged that The Magdalena Steam Navigation Company was, before 3d November, 1856, completely registered and certified under stats. 7 & 8 Vict. c. 110, and 10 & 11 Vict. c. 78 ; that the Company was on that day duly registered and certified and incorporated under The Joint Stock Companies' Act, 1856, 19 & 20 Vict. c. 47 ; that before and at the time of the passing of the last mentioned Act, and from thence hitherto, defendant was a shareholder in the Company, and entitled to one hundred shares in the capital stock of the Company, and was, in the register of shareholders of the Company, registered as such shareholder and as the holder of the said one hundred shares, and was at the time of the commencement of the winding up of the Company, and thence hitherto, in respect of the said one hundred shares, a contributory of the Company within the meaning of the last mentioned Act ; that, on 10th March, 1857, it was resolved, at an extraordinary general meeting of the Company, that the Company should be wound up voluntarily pursuant to the said Act ; that this resolution was confirmed at another general meeting held on 6th May, 1857, when a liquidator was appointed, who, on 22d April, 1858, made a call of 6l. per share on all the shareholders of the Company in respect of the shares held by them in the capital stock of the Company, payable on 6th May then **[95]** next ; that defendant had notice of the call, and was requested to pay 600l., the amount of it payable by him ; that everything had happened and every condition had been observed to render defendant liable, and the time for payment of the call had elapsed before action. Breach, that defendant had made default in paying the call, and that it was still due.

Plea, by defendant in person. That he ought not to be compelled to answer in this action, because he says that he was and is an alien born, and never was nor is a subject of Her Majesty the Queen or any of Her predecessors, by naturalization, denization or otherwise ; and that, at the time of the accruing of the said cause of action in the declaration mentioned, and at the time of the commencement of this action, he was and thence hitherto hath been and still is a public minister of certain foreign States, and authorized and received as such by Her said Majesty, to wit, Envoy Extraordinary and Minister Plenipotentiary of and for the Republics of Guatemala and New Granada respectively, and that he was at the respective times aforesaid, and from thence hitherto hath been and still is, acting as such Envoy Extraordinary and Minister Plenipotentiary as aforesaid, and was not at the respective times aforesaid, or at any time since, and is not now, seised or possessed of any lands, tenements, hereditaments, or real estate, or chattels real, within this realm, and had not at the respective times aforesaid, nor has he at any time since, done any act or thing, nor at the respective times aforesaid, nor at any time since, has there existed, nor does there now exist, any matter or thing by reason or in consequence whereof he has at any time waived, or at the respective times aforesaid had become, or at any time since has become, **[96]** or is disentitled to, any of the rights, privileges or exemptions of or appertaining to a public minister so authorized, received and acting as aforesaid, or by reason or in consequence whereof he ought to be compelled to answer in this action ; and that the said writ was issued with intent to prosecute and for the purpose of prosecuting this action *to judgment* (*a*) against him whilst such public minister as aforesaid, and this he is ready to verify ; wherefore he prays judgment if he ought to be compelled to answer in this action, &c.

Demurrer. Joinder in demurrer.

(*a*) The words in italics were inserted by consent, during the argument, at the suggestion of the Court. See pp. 103-4.

Bovill, for the plaintiffs (*b*). The plea is bad. The action lies against the defendant, notwithstanding his character of ambassador. He is sued for a debt due from him in this country, as a member of a trading Company, which has been wound up voluntarily, and therefore, as must be presumed, with his consent. If an ambassador engages in trade in the country to which he is accredited, he thereby becomes liable to be sued there in respect of all matters arising out of his mercantile transactions. Vattel states the law on this subject more fully and accurately than any other author. In Book iv. c. 8, s. 113, p. 491 (Chitty's ed. 1834), he says: "The independency of a public minister is the true reason of his exemption from the jurisdiction of the country in which he resides. No legal process can be directly issued against him, because he is not subject to the authority of the prince or the magistrates. **[97]** But it is asked whether that exemption of his person extends indiscriminately to all his property?" He then proceeds to discuss to what property of the ambassador the exemption extends; and comes to the conclusion that it is limited to such personal property as is necessary and incident to his character as ambassador; and that it does not apply to his immovable property, real estate, or property as a trader. This is laid down in sect. 114 as follows: "But this exemption cannot extend to such property as evidently belongs to the ambassador under any other relation than that of minister. What has no affinity with his functions and character cannot partake of the privileges which are solely derived from his functions and character. Should a minister, therefore (as it has often been the case), embark in any branch of commerce, all the effects, goods, money and debts, active and passive, which are connected with his mercantile concerns; —and likewise all contests and law suits to which they may give rise,—fall under the jurisdiction of the country. And although, in consequence of the minister's independency, no legal process can, in those law suits, be directly issued against his person, he is, nevertheless, by the seizure of the effects belonging to his commerce, indirectly compelled to plead in his own defence." Although, therefore, an ambassador's person is in all cases privileged, Vattel is a distinct authority to shew that an action will lie against him in his trading capacity. If so, there is no breach of his privilege in bringing such an action; still less in continuing it after he has put in an appearance, as the present defendant has done. If the defendant wished to dispute the jurisdiction his proper course was to apply to have the proceedings set aside; just as, in many instances, of **[98]** which *Triquet* v. *Bath* (3 Burr. 1478) is one, persons having the privilege of ambassadors or the servants of ambassadors have applied to have bail bonds cancelled, which they had given on filing common bail. In Grotius de Jure Belli et Pacis, lib. 2, c. 18, s. 9, it is stated: "Bona quoque legati mobilia, et quæ proinde habentur personæ accessio, pignoris causâ, aut ad solutionem debiti capi non posse, nec per judiciorum ordinem, nec, quod quidam volunt, manu regiâ, verius est; nam omnis coactio abesse a legato debet, tam quæ res ei necessarias quàm quæ personam tangit, quo plena ei sit securitas. Si quid ergo debiti contraxit, et, ut fit, res soli eo loco nullas possideat, ipse compellandus erit amicè, et, si detrectet, is qui misit, ita ut ad postremum usurpentur ea, quæ adversus debitores extrà territorium positos usurpari solent." Although then, no compulsion, or "coactio" can be employed, an ambassador may be brought into court "amicè," that is, so long as his ambassadorial character, and his personal privilege, are not interfered with; just as proceedings may be instituted against debtors who are without the territory. His person, it is true, must not be molested, nor may the bulk of his goods be taken in execution; but a suit may be brought against him, though it may end in process against such of his goods as he has as a trader. [Lord Campbell C.J. Does our municipal law deprive an ambassador of any of his immunities if he engages in trade? Stat. 7 Anne, c. 12, s. 3, contains no such limitation upon his exemption from suits as you seek to establish.] The only express authority upon the point to be found in the books is *Barbuit's Case* (Cas. temp. Talbot, 281), which is often quoted as a decision that an ambassador **[99]** does not lose his privilege by engaging in trade. That doctrine, however, is to be found there merely in a note by the reporter; which enunciates nothing more than that an ambassador, though he trades, retains his personal privileges, e.g. the privilege from arrest. It is consistent with what is there said, that his goods may not be privileged under such circumstances. In 4 Inst. 153, Lord Coke, after saying that

(*b*) Tuesday, June 7th. Before Lord Campbell C.J., Wightman, Erle and Crompton Js.

"if a foreign ambassador, being prorex, committeth here any crime which is contrà jus gentium, as treason, felony, adultery, or any other crime which is against the law of nations, he loseth the privilege and dignity of an ambassador, as unworthy of so high a place, and may be punished here, as any other private alien," adds "and so of contracts that be good jure gentium he must answer here." In R. Phillimore's Commentaries upon International Law, vol. ii., part 6, c. 8, the following passages occur. Sect. 176, "We have now to consider the exemption of the ambassador from the jurisdiction of the civil tribunals of the country to which he is accredited. With respect to this subject, the privileges of extra-territoriality have been established by the universal consent and custom of all civilized nations, in order to secure the sanctity of the ambassador: they have been thrown up, from time to time, as outworks to the citadel." Sect. 178. "Nevertheless, the exemption of the ambassador, his family and his suite, from the jurisdiction of the civil, as well as the criminal tribunals of the country in which he was resident, is not absolutely necessary for the preservation of the inviolability of the ambassador. 'Persona,' Bynkershoek truly remarks, 'quantumvis sancta, solâ in jus vocatione non violatur.'" Sect. 180. "It was a further extension of the fiction of extra-territoriality to render **[100]** the ambassador's personal property exempt from arrest." "It has not yet been, and probably never will be, extended to real property, if an ambassador should happen to possess any in the country of his mission. The territorial possession is in no way attached to the character of the ambassador. The fiction of extra-territoriality cannot be applied to immovable possessions, and there is no doubt that they, with their incidents, remain subject to the jurisdiction (forum reale) of the country in which they are situate." In sect. 181, the author says, "There are some exceptions, moreover, to the privilege respecting personal property, viz.:—1. When the ambassador becomes a trader or a merchant in the country to which he is sent, the property embarked by him, or accruing to him, in this capacity, is liable to seizure and condemnation, at the instance of creditors, in the same manner as the property of any other trader or merchant." "The law was correctly laid down on this subject of the merchant-ambassador by the Dutch Tribunal, in 1720-1, when the Envoy Extraordinary of the Duke of Holstein was sued by his creditors for mercantile debts contracted by him; and the Courts at the Hague granted a decree of arrest and citation against him. The arrest was to operate on all goods, money and effects within the jurisdiction of the tribunal, with the exception of the moveables, equipages and other things belonging to him in the character of ambassador"(*a*). "This instance is memorable, not merely on account of the correct enunciation of the law to which it gave rise, but also because it furnished Bynkershoek with the occasion of writing his excellent treatise 'De Foro Legatorum.'" **[101]** Wheaton's Elements of International Law, part iii., c. 1, § 18, is to the same effect. "The personal effects or movables belonging to the minister, within the territory of the State where he resides, are entirely exempt from the local jurisdiction; so also of his dwelling house; but any other real property, or immovables, of which he may be possessed within the foreign territory, is subject to its laws and jurisdiction. Nor is the personal property of which he may be possessed as a merchant carrying on trade, or in a fiduciary character as an executor, &c., exempt from the operation of the local laws." With this agrees Martens, Précis du Droit des Gens, lib. vii. c. 5, s. 3 (Cobbett's Translation, 1802), where, treating of the exceptions to the general rule that an ambassador and his property are exempted from the civil jurisdiction of the State, he says: "With respect to property, that which belongs to him in any other quality than that of minister is subject to the jurisdiction of the State, and may be seized on for causes not relative to the quality of minister: though, strictly speaking, the property belonging to him as minister is exempt from seizure, during the time of his mission, yet, the mission once terminated, if he attempts to quit the State without paying his debts, the State may refuse to let him depart, or, at least, to carry away his property; and may even seize on this latter." *The Emperor of Brazil* v. *Robinson* (5 Dowl. 522) shews that even a foreign potentate, if he sues here, in a cause arising out of commercial transactions, may be made to find security for costs. De Wicquefort, a most strenuous advocate of the privileges of ambassadors, gives an instance in which an ambassador is amenable to the law of the country **[102]** where he resides, namely, where he has taken a house and refuses to give up possession at the end of the lease. The passage

(*a*) Referring to Bynkershoek de Foro Legatorum, capp. xiv. xvi.

occurs in the author's L'Ambassadeur et ses Fonctions, tome premier, liv. i. sect. 28, p. 426 (ed. Amsterdam 1730), where it is said: L'Ambassadeur qui auroit loué une maison, est obligé d'en sortir à la fin du bail, s'il ne l'a pas voulu continuer; s'il ne le veut par faire, il y peut estre contraint par la justice du lieu; parce que le propriétaire qui a loué sa maison à un autre, ou qui y veut venir demeurer lui-mesme, estant obligé d' accomplir ce qu'il a promis d'ailleurs, ou ne pouvant lui-mesme coucher dans la rue, l'ambassadeur doit satisfaire au contract, et mesme y peut estre contraint." The decision in *Taylor* v. *Best* (14 Com. B. 487), though it upholds the doctrine of an ambassador's personal immunity, unless he attorns to the jurisdiction, does not shew that under no possible circumstances can a writ be issued against him. Maule J. is there reported as saying, during the argument (page 493), "The cases you rely on are cases of personal privilege of the ambassador. It may be that his person or his goods may be sacred; but why should the plaintiff be deprived of the means of ascertaining the debt?" Again, he says (page 516), "What more is done by a proceeding in our Courts without arrest, than is done by the epistola of the civil law?" So, Jervis C.J., in giving judgment, says (page 521), "It is said,—and perhaps truly said,—that an ambassador or foreign minister is privileged from suit in the Courts of the country to which he is accredited, or, at all events, from being proceeded against in a manner which may ultimatey result in the coercion of his person, or the seizure of his personal effects necessary to his comfort and **[103]** dignity; and that he cannot be compelled, *in invitum*, or against his will, to engage in any litigation in the Courts of the country to which he is sent. But all the foreign jurists hold, that if the suit can be founded without attacking the personal liberty of the ambassador, or interfering with his dignity or personal comfort, it may proceed." And Maule J., in his judgment (page 523), thus expresses himself: "Whether an ambassador or public minister duly accredited to the Queen" "is so far privileged as to be free from all liability to be sued in the Courts of this country, is a very grave question, and one which does not seem to have been settled by any judicial determination in our Courts, or indeed elsewhere." "It is a point which is very fit to be considered whenever it may be properly presented for decision," "whether an ambassador or public minister can be brought into Court against his will, by process not immediately affecting either his person or his property, and have his rights and liabilities ascertained and determined." All these authorities shew that there are cases in which a suit will lie against an ambassador, although, by reason of his privilege, process cannot be issued, in the suit, against his person, or such of his goods as are connected with his dignity. [Lord Campbell C.J. I feel some difficulty in understanding how a suit can be brought against him without some degree of personal "coactio."] At all events, a writ may be taken out against him, for the purpose of saving the Statute of Limitations, even supposing that the action cannot be prosecuted to judgment while he continues ambassador. The plea does not aver that the writ was issued for the purpose of prosecuting **[104]** the action to judgment. [Lord Campbell C.J. here suggested that the plea might be amended by inserting the words "to judgment"; and, with Bovill's consent, the amendment was made.] The general principle that an ambassador, if a trader, may be sued, justifies the prosecution of the action even to judgment. The plaintiffs are entitled, according to Maule J.'s opinion in *Taylor* v. *Best* (14 Com. B. 487, 493), to have the amount of the debt due to them judicially ascertained; and, should the defendant cease hereafter to be ambassador, they might then take out execution on the judgment.

Sir Fitzroy Kelly Attorney General, contrà. There, is no jurisdiction in the Courts of this country to implead am ambassador, or call upon him to answer, in a suit for a civil claim. Criminal proceedings alone can be taken against him, under certain circumstances not material to the present discussion. While he is clothed with the character of ambassador, the civil tribunals of the country to which he is accredited have no jurisdiction whatever to entertain a suit against him; and any such suit is illegal and void ab initio. Stat. 7 Anne, c. 12, is a legislative declaration to that effect; and merely expresses the law of nations on the subject, as it is stated by Vattel and all the great text writers on that law. [Erle J. The first section of the statute is confined to the particular case, which had happened, of the arrest of the Russian ambassador. Lord Campbell C.J. And it does not appear that that ambassador had engaged in trade.] Quoad that particular case, the statute simply declares the general law of nations. The words "be it **[105]** therefore declared" are used in sect. 1. But,

by sect. 3, it is "further declared" "that all writs and processes that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other publick minister of any foreign prince or state, authorized and received as such by her Majesty, her heirs or successors, or the domestick, or domestick servant of any such ambassador, or other publick minister, may be arrested and 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." Sect. 3, therefore, is a declaration that the law of nations shall be deemed to apply to all future cases of process sued out against any ambassador to this country; and, when read with sect. 4, by which it is "enacted" that those who issue or put in force such process shall be liable to punishment, it amounts to a prohibition of the issue of any such process. Lord Mansfield takes this view of the statute in *Triquet* v. *Bath* (3 Burr. 1478, 1480), where he says: "This privilege of foreign ministers and their domestic servants depends upon the law of nations. The Act of Parliament of 7 Anne, c. 12, is declaratory of it. All that is new in this Act, is the clause which gives a summary jurisdiction for the punishment of the infactors of this law." [Erle J. Does not sect. 3 apply only to process whereby the person may be arrested? It was the issue of a writ against the person of the Russian ambassador which gave occasion for the statute.] In *Barbuit's Case* (Cas. temp. Talbot, 281) the proceedings sought to be set aside had been taken in Chancery. That case, therefore, is an authority that the statute of **[106]** Anne applies to other proceedings than bailable process. [Erle J. All that is said about an ambassador, in the judgment in that case, is extra-judical. The decision was, that the applicant, being only a consul, was not entitled to the privilege, whatever that might be, of an ambassador.] All the authorities shew that an ambassador's person is absolutely privileged from molestation. Personal service of the writ (which might happen) would be a violation of that privilege. It is said that the action lies against the present defendant because he is a trader. But, even if that were so, the declaration would be insufficient; for it contains no allegation that he is a trader, or has goods quà trader, so as to bring the case within the alleged exception from privilege; and the fact is, that he is not a trader, and has no such goods. It has, however, never been decided in this country that an action lies against an ambassador if he has engaged in trade. The argument on the other side is founded on the dicta of Maule J. in *Taylor* v. *Best* (14 Com. B. 487, 523), which are wholly unsupported by authority. Possibly it may be the law that, in exceptional cases, proceedings taken in rem, e.g., in bankruptcy, and against private persons, may be continued, although they may prove to involve the rights of an ambassador. But no original proceedings can be taken against an ambassador. If his goods and person are, by the law of nations, privileged, it is an inconsistency, and a mockery of that privilege, to say that he can, nevertheless, be sued as a trader, and so be compelled either to come in and defend the action, or to have a judgment signed against him. Can it be said that he is compellable to come forward as a witness, or to answer **[107]** interrogatories in the action? But if the action is sustainable he may practically be obliged to do so, in order to avoid a judgment. The authorities are conclusive, as to his absolute immunity from suit in all cases. In Vattel, bk. iv. c. 7, s. 92, p. 469 (Chitty's ed. 1834), it is said: "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 on the jurisdiction and authority of the state in which he resides." So, again, in chap. 8, s. 110, p. 488: "Some authors will have an ambassador to be subject, in civil cases, to the jurisdiction of the country where he resides,—at least in such cases as have arisen during the time of his embassy; and, in support of their opinion, they allege that this subjection is by no means derogatory to the ambassadorial character; 'for,' say they, 'however sacred a person may be, his inviolability is not affected by suing him in a civil action.' But it is not on account of the sacredness of their person that ambassadors cannot be sued: it is because they are independent of the jurisdiction of the country to which they are sent; and the substantial reasons on which that independency is grounded may be seen in a preceding part of this work (book iv. c. 7, s. 92). Let us here add, that it is in every respect highly proper, and even necessary, that an ambassador should be exempt from judicial prosecution even in civil causes, in order that he may be free from molestation in the exercise of his functions." The ambassador, in fact, is supposed, to

all intents and purposes, to be residing in his own [108] country. The case cited on the other side, from Bynkershoek, de Foro Legatorum, cap. xiv., is no authority. It was not the case of an original action against an ambassador; but of a decree of arrest against his goods, granted at the instance of his creditors. Bynkershoek says that the States General had called upon the Court to justify this decree, and were still deliberating on the answer of the Court, which, in his opinion, was not based upon satisfactory reasons. His own opinion as to the immunity of an ambassador from suit is plainly laid down in cap. xvi., where he says: "Legatum, ut instructus et cum instrumento est, liberum esse volo. Nego igitur eum conveniri posse." He then guards himself against being supposed to hold that process against an ambassador's goods cannot in any case be issued. "Nolim tamen quisquam ita existimet nullo planè modo conveniri posse legatum, ubi degit, quin, si me audias, poterit aliquando." "Scilicet in regionibus ubi ob bona convenimur, et ex eorum arresto forum sortimur, nullus dubito, quin et legatorum bona arresto detineri, et per hoc ipsi in jus vocari possint. Bona, dico, sive immobilia, sive mobilia, dummodo neque ad personam ejus pertineant, neque, tanquam legatus, possideat, uno verbo, sine quibus legationem rectè obire potest." That is to say, an ambassador may be indirectly constrained to come in and defend a suit, by the seizure of his goods, in countries where such process is permissible. But it by no means follows that, even in such countries, he can be compelled to intervene, if he chooses to let his goods go rather than to submit to the jurisdiction. And certainly there can be no jurisdiction in the Courts of this or any other country, to entertain a suit involving molestation to his person, unless he voluntarily makes himself a party to the suit. This is [109] clearly implied in Wheaton's Elements of International Law, part III. c. 1, § 16, I., where it is said that the ambassador's "exemption from the jurisdiction of the local tribunals and authorities does not apply to the contentious jurisdiction which may be conferred on those tribunals by the minister voluntarily making himself a party to a suit at law." *Wadsworth* v. *The Queen of Spain* (17 Q. B. 171), *De Haber* v. *The Queen of Portugal* (17 Q. B. 161), shew that an action will not lie in this country against a foreign potentate sued as such; and the same law is applicable to an ambassador, who is the representative here of his Sovereign. In *The Duke of Brunswick* v. *The King of Hanover* (6 Beav. 1; 2 H. L. Ca. 1) it was conceded that a foreign Sovereign is exempt from the jurisdiction of our Courts for acts done in his public character. [Lord Campbell C.J. There can be no doubt, from those cases, that an ambassador is not liable to be sued in this country for acts done by him in his public capacity.] An ambassador is in no way liable to the jurisdiction, in civil matters, of the municipal Courts of the country to which he is accredited. This is plainly laid down, as follows, in Stephen's Commentaries on the Laws of England, vol. 2, p. 497 (4th ed.): "The rights, the powers, the duties and the privileges of ambassadors are determined by the law of nature and nations, and not by any municipal constitutions. For, as they represent the persons of their respective masters, who owe no subjection to any laws but those of their own country, their actions are not subject to the control of the private law of that state wherein they are appointed to reside. He that is subject to the coercion of laws is necessarily dependent on that power by whom those laws were made: [110] but an ambassador ought to be independent of every power except that by which he is sent, and of consequence ought not to be subject to the mere municipal laws of that nation wherein he is to exercise his functions." It cannot be contended that the defendant has, by appearing to the writ, precluded himself from saying that the suit is improperly brought. [Lord Campbell C.J. His plea denies that the Court has jurisdiction. Erle J. Supposing that he had made an affidavit in Court, and had moved to stay proceedings, it could not have been said that he thereby admitted the jurisdiction. Lord Campbell C.J. The plea is only another mode of doing that.] That is so. Lastly, the plea is good as shewing ground for a suspension of the writ, at all events for so long as the defendant remains an ambassador; just as a plea of the plaintiff's excommunication used to suspend a writ until the plaintiff had procured letters of absolution: Co. Litt. sect. 201.

Bovill, in reply, admitted that stat. 7 Anne, c. 12, is merely declaratory of the law of nations, and referred to *Heathfield* v. *Chilton* (4 Burr. 2016), in which Lord Mansfield repeated the opinion which he had before expressed to that effect in *Triquet* v. *Bath* (3 Burr. 1478). He relied on the authorities cited in his argument, as proving that the action was maintainable by the law of nations, and suggested instances (which

are noticed in the judgment of the Court) in which the doctrine that an ambassador is in all cases wholly exempt from the civil jurisdiction of our Courts would give rise to serious inconveniences.

Cur. adv. vult.

[111] Lord Campbell C.J. now delivered the judgment of the Court.

The question raised by this record is, whether the public minister of a foreign state, accredited to and received by Her Majesty, having no real property in England, and having done nothing to disentitle him to the privileges generally belonging to such public minister, may be sued, against his will, in the Courts of this country, for a debt, neither his person nor his goods being touched by the suit, while he remains such public minister. The defendant is accredited to and received by Her Majesty as Envoy Extraordinary and Minister Plenipotentiary for the Republics of Guatemala and New Granada respectively; and a writ has been sued out against him and served upon him, to recover an alleged debt, for the purpose of prosecuting this action to judgment against him whilst he continues such public minister. He says, by his plea to the jurisdiction of the Court, that, by reason of his privilege as such public minister, he ought not to be compelled to answer. We are of opinion that his plea is good, and that we are bound to give judgment in his favour. 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 **[112]** 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. The counsel for the plaintiffs, admitting that the person of an ambassador cannot be lawfully imprisoned in a suit, and that his goods cannot be taken in execution, contended that he might be cited and impleaded; and he referred to the decision of the tribunal at the Hague, in 1720, which is reported by Bynkershoek, and was the cause of that great jurist writing his valuable treatise De Foro Legatorum. But this case is to be found in chap. xiv., entitled "De Legato Mercatore," in which is explained the exception of an ambassador engaging in commerce for his private gain. The Envoy Extraordinary of the Duke of Holstein to the States General, leaving the Hague, where he ought to have resided, "Amsterdamum se confert, et strenuè mercatorem agit. Plurium debitor factus, Hagam revertitur, sed et plures curiam Hollandiæ adeunt, et impetrant mandatum arresti et in jus vocationis." The arrest was granted to operate on all goods, money and effects within the jurisdiction of the tribunal, with the exception of the movables, equipages and other things belonging to him in his character of ambassador. But this citation was entirely in respect of his having engaged in commerce, and shews that otherwise he would not have been subject to the jurisdiction of the Dutch Courts. Lord Coke's authority (4 Inst. 153) was cited, where, writing, of the privileges of an ambasssador, having said that "for any crime committed contrà jus gentium, as treason, felony, adultery, or any other crime which is against the law of nations, he **[113]** loseth the privilege and dignity of an ambassador, as unworthy of so high a place," he adds, "and so of contracts that be good jure gentium he must answer here." There does not seem to be anything in the contract set out in this declaration contrary to the law of nations; but Lord Coke, who is so great an authority as to our municipal law, is entitled to little respect as a general jurist.

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* (14 Com. B. 487, 493 (per Maule J.), it is supported by no authority; the pro-

ceeding 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. **[114]** It is allowed that he would not be bound to answer interrogatories, or to obey a subpœna requiring him to be examined as a witness for the plaintiffs. But he must defend the action, which may be for a debt of 100,000l., or for a libel, or to recover damages for some gross fraud imputed to him. He must retain an attorney and counsel, and subpœna 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? Then, what benefit does it produce to the plaintiffs? There can be no execution upon it while the ambassador is accredited, nor even when he is recalled, if he only remains a reasonable time in this country after his recall. In countries where there may be a citation by seizure of goods, if an ambassador loses his privilege by engaging in commerce, he not only may be cited, but all his goods unconnected with his diplomatic functions may be arrested to force him to appear, and may afterwards, while he continues ambassador, be taken in execution on the judgment.

Reference was frequently made during the argument to stat. 7 Anne, c. 12; but it can be of no service to the plaintiffs. The 1st and 3d sections are only declaratory of the law of nations, in conformity with what we have laid down; and the other sections, which regulate procedure, do not touch the extent of the immunity to which the ambassador is entitled. The Russian ambassador had been taken from his coach and imprisoned; but the statute cannot be considered as directed only against bailable process. The writs and processes described in the 3rd section are not to be confined to such as directly touch the person or goods of an ambassador, but extend **[115]** to such as, in their usual consequences, would have this effect. At any rate, it never was intended by this statute to abridge the immunity which the law of nations gives to ambassadors, that they shall not be impleaded in the Courts of the country to which they are accredited. An argument was drawn from the course pursued in some instances of setting aside bail bonds given by persons having the privilege of ambassadors, or their servants, on filing common bail. This, perhaps, is as much as could reasonably be asked on a summary application to the Court, but does not shew that the action may not be entirely stopped by a plea regularly pleaded to the jurisdiction of the Court.

Some inconveniences have been pointed out as arising from this doctrine, which, we think, need not be experienced. If the ambassador has contracted jointly with others, the objection that he is not joined as a defendant may be met by shewing that he is not liable to be sued. As to the difficulty of removing an ambassador from a house of which he unlawfully keeps possession, De Wicquefort, and other writers of authority on this subject, point out that in such cases there may be a specific remedy by injunction. Those who cannot safely trust to the honour of an ambassador, in supplying him with what he wants, may refuse to deal with him without a surety, who may be sued; and the resource is always open of making a complaint to the government by which the ambassador is accredited. Such inconveniences are trifling, compared with those which might arise were it to be held that all public ministers may be impleaded in our municipal Courts, and that judgment may be obtained against them in all actions, either ex contractu or ex delicto. It certainly has not hitherto been expressly decided that a **[116]** 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, and we give judgment for the defendant.

Judgment for the defendant.