

interest, as it involves a question of very great importance in that due process of law which does and must exist between the States, if justice is to be administered through courts of justice.

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#### THE VON IGEL CASE

The von Igel case raises certain interesting questions of diplomatic privilege, the facts publicly reported being as follows:

In April last Herr Wolf von Igel, former secretary of Captain von Papien, was arrested in his New York office and his papers seized. These were said to contain evidence of their owners' complicity in conspiracies against the neutrality of the United States, along with the revelation of others implicated with him. Copies were made of some or all of these. Against this action Count Bernstorff protested, claiming von Igel to be an attaché of the German Embassy and the papers therefore Embassy documents privileged from seizure.

The Department of State replied that the actions complained of were committed before von Igel became connected with the German Embassy. As to the papers, von Bernstorff was asked to identify what belonged to the Embassy. This request was thought to be an embarrassing one, since copies were kept and responsibility for unfriendly acts might thus be held to be confessed. The request was refused.

Assuming that the facts are correctly stated, the questions at issue appear to be:

1. Does subsequent connection with a foreign embassy or legation wipe out the liability for acts previously committed?
2. May a foreign diplomatic agent claim at will any papers as belonging to his Government without identification and proof?
3. In the case cited above, if the papers were surrendered, could copies be properly kept?
4. Is there any law paramount to the right of diplomatic immunity?

Taking up these questions *seriatim*, we remark that from the moment that von Igel was certified to as a member of the German Embassy staff, his immunities became operative and his papers became inviolable. All this is a question of record. The object of this immunity is to add to his serviceability, not to screen him from the consequences of illegal acts. It is inconceivable that a man should be taken into the service

of an embassy in order to screen him. Prior offences must have been unknown to the head of the embassy, else he would not have been appointed. Otherwise scandal results. The reputation of an embassy demands that its members observe the law. The presumption, therefore, seems to me strong, not only that prior offences are not wiped out by reason of a subsequent diplomatic character, but also that the embassy to which such an offender is attached must desire to purge itself, and must insist upon their trial, if necessary, their punishment.

But with papers it may be different. They may truly relate to the work of the embassy and be in no wise charged with their custodian's earlier doings. It is therefore just to allow the embassy head to say what their character is. To take copies of them negatives their inviolability.

Moreover, and here we come to our second query, no one else can determine their character. No one else is in a position to know it. You have got to trust your resident minister altogether, or not at all and have him recalled. If he is plotting against you, there is your right of self-defense, of course, but espionage or knowledge of his secrets by judicial process should not be necessary to self-defense; they are not consistent with real immunity. Nor is it immunity to surrender papers of which copies are kept. It is not the substance of the papers, but the knowledge derived from them which counts. Real immunity demands that you shall not know what they import. In default of actual precedents, then, I should incline to think in the case in point that von Igel could properly be arrested and tried for offences charged to have been committed before his diplomatic character attached; that if von Bernstorff claimed von Igel's papers as embassy documents, they ought to have been held inviolable and that no copies of them should be retained.

The right of a state to defend itself has been alluded to. Here we have precedents; here we are on firmer ground. If any member of an embassy, resident in a state, plots against it, attempts to injure its integrity, its neutrality, its vital interests, its rights are superior to his rights, and he may be arrested and sent out of the country. Even then, however, he is not under the jurisdiction of his place of residence. The right of self-defense in the state exists for protection, not for punishment; that is left to his own government.

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