

THE PARLEMENT BELGE. (1878. O. No. 60.)

1879

March 15.

*Jurisdiction—Warrant to arrest Mail Packet belonging to Foreign State—
Treaty-making Power of Crown—Collision.*

A packet conveying mails and carrying on commerce does not, notwithstanding that she belongs to the sovereign of a foreign state and is officered by officers commissioned by him, come within the category of vessels which are exempt from process of law; and it is not competent to the Crown, without the authority of Parliament, to clothe such a vessel with the immunity of a foreign ship of war, so as to deprive a British subject of his right to proceed against her.

THIS was an action of damage instituted on behalf of the owners of the steam-tug *Daring* against the steamship *Parlement Belge* and her freight. The writ was issued on the 16th of February, 1878, and was duly served, but no appearance was entered in the action, and on the 4th of January, in this year, the plaintiffs delivered their statement of claim. Such statement of claim alleged in substance, inter alia, as follows:—

At about 4.30 P.M. on the 14th of February, 1878, the steam-tug *Daring* brought up to an anchor in Dover Bay, within the port and harbour of Dover, about half-a-mile east of Dover pier.

In the course of the evening a fog began to rise from off the shore. About 10.30, P.M., the fog still continuing, the *Daring* was riding in the same place, having her anchor regulation light duly exhibited and burning brightly, her fog-bell rung at proper intervals, and a good look-out kept on board her.

In these circumstances the paddle steamship *Parlement Belge* . . . ran her stem right into the starboard side of the *Daring*, cutting into her about fourteen feet, and doing her a great deal of damage.

The collision was caused by the bad navigation and negligence of those on board the *Parlement Belge*.

The *Parlement Belge* is a Belgian vessel, and was and is now employed in the service of carrying the mails between Dover and Ostend in Belgium.

Before and since the time of the collision in question she was engaged in carrying, besides the mails, passengers and merchandise and in earning passage-money and freight.

The plaintiffs are unable to discover whether the *Parlement Belge* was at the time of the collision, or is now, the property of his Majesty the King of the Belgians, or whether she was only chartered for the purpose by his Majesty, or by some officer or officers of his Majesty's Government. They have caused application to be made to the Government of his Majesty to give them compensation for the damage done to them, but have been unable to obtain such compensation.

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The statement of claim then claimed, inter alia,

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Judgment against the *Parlement Belge*, her tackle, apparel, and furniture, for the damage occasioned to the plaintiffs by the collision, and for the costs of this action.

A warrant to arrest the *Parlement Belge*, her tackle, apparel, and furniture, and if necessary a sale thereof.

On the 4th of February, 1879, counsel for the plaintiffs moved the judge in Court to direct that judgment in the action, with costs, should be entered for the plaintiffs; that the accounts and vouchers relating to the damage sustained in the action might be referred to the registrar and merchants to report thereon, and that a warrant might issue for the arrest of the *Parlement Belge*.

The Admiralty Advocate (Dr. Deane, Q.C.), appeared on behalf of the Crown, in opposition to the motion, and the Court directed that the hearing of the case should be adjourned for formal argument; the Crown having liberty, if so advised, to shew cause why the warrant applied for by the plaintiffs should not be refused on the ground that the *Parlement Belge* was, in the circumstances of the case, exempt from the jurisdiction of the Court. (1)

On the 24th of February the following information and protest was filed in the registry:—

The Attorney General, under protest on behalf of her Majesty the Queen, gives the Court to understand and be informed as follows:—

1. Before and at the time of the alleged collision, and thenceforward till the present time, the *Parlement Belge* was one of the mail packets running between Ostend and Dover, and one of the packets mentioned in Article VI. of the convention of the 17th of February, 1876, hereinafter referred to.

2. During the period hereinbefore mentioned, and at all material times, the said packets were and are the property of his Majesty the King of the Belgians, and in his possession, control, and employ as reigning sovereign of the state of Belgium, and have been and still are public vessels of the government and sovereign state of Belgium carrying his said Majesty's royal pennon, and were and are being navigated and employed by and in the possession of such Government, and not otherwise.

3. The said packets were and are officered by officers of the Royal Belgian Navy holding commissions from his Majesty the King of the Belgians, and in the pay and service of his Government. The said officers are appointed by, and are under the control and orders of the Belgian minister of public works.

(1) The motion was again called on Crown might raise the question of on the 18th of February, and was jurisdiction in a formal manner. further adjourned in order that the

4. During the period hereinbefore mentioned, and at all material times, a convention dated the 17th of February, 1876, has been and is in force between her Majesty the Queen and his Majesty the King of the Belgians, to a copy of which, in the French and English language, the defendants crave leave to refer as if the said convention were duly set forth at length herein.

5. During the period hereinbefore mentioned and at all material times, the *Parlement Belge* was carrying the public mails under the said convention between and for the Royal Post Offices of Great Britain and Belgium.

6. The Attorney General, under protest, says that this Honourable Court has no jurisdiction to entertain this suit, and that the plaintiffs cannot prosecute the same therein.

7. The Attorney General under protest as aforesaid, gives the Court to understand and be informed herein, but he does not admit the matters alleged in any of the paragraphs of the statement of claim to be true.

The protest concluded with the following prayer :—

Wherefore the Attorney General, on behalf of her Majesty the Queen, prays the Court to stay all proceedings in this action, and to dismiss the motion of the plaintiffs with costs to the Attorney General on behalf of her Majesty, of and incident to this application and action. (1)

The following are the material portions of the treaty referred to in the protest :—

CONVENTION between her Majesty and the King of the Belgians, regulating the Communications by Post between the British and Belgian Dominions.

Signed at London, February 17, 1876.

[Ratifications exchanged at London, March 24, 1876.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the King of the Belgians, being desirous of strengthening the friendly relations which unite the two countries, and wishing to regulate by special arrangements (forming a sequel to the General Postal Treaty concluded at Berne on the 9th of October, 1874) the postal relations between their respective Offices, have named as their Plenipotentiaries for this purpose, that is to say :—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Edward Henry Stanley, Earl of Derby . . . her Majesty's Principal Secretary of State for Foreign Affairs, &c. &c., and the Right Honourable John James Robert Manners (commonly called Lord John Manners) . . . her Majesty's Postmaster-General ;

And his Majesty the King of the Belgians, Baron Henry Solvyns, . . . Envoy Extraordinary and Minister Plenipotentiary of his Majesty the King of the Belgians to her Britannic Majesty, &c. &c. ;

(1) The information and protest was signed by the Attorney General.

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Who, after having reciprocally communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

There shall be between the Post Offices of Great Britain and Belgium a periodical and regular exchange of correspondence of every kind in international service as well as in transit.

ARTICLE II.

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ARTICLE III.

The mails between Great Britain and Belgium shall be conveyed by means of special packets running between Ostend and Dover.

Each Office shall have the right to employ subsidiarily, and so far as it shall be of any advantage on the score of speed, the route *viâ* France, and the French packets from Calais to Dover, for the conveyance of its correspondence in closed bags to the other Office.

With regard to the mails conveyed on account of other Offices, it will be the duty of the despatching Office to indicate the route to be followed.

ARTICLE IV.

The Post Offices of Great Britain and of Belgium shall fix by a mutual agreement, the time for the departure of the packets from Ostend and Dover, and they shall regulate this service in connection with the railway trains, so as to insure with the greatest possible speed, the transmission of mails for international as well as for transit service.

ARTICLE V.

✱ The Belgian Government shall continue to perform, at its own expense, the double daily service for the conveyance of the mails from Ostend to Dover and *vice versâ* (a service which must be performed at least six days in the week, the service on Sunday being optional).

ARTICLE VI.

The packets employed for the conveyance of the correspondence between Ostend and Dover shall be steam-boats of sufficient power and size for the service in which they are to be employed. They shall be vessels belonging to Government or freighted by order of Government. (Ce seront des bâtiments appartenant à l'État ou frétés pour le compte de l'État.)

These vessels shall be considered, and treated (*reçus*) in the port of Dover and in all other British ports at which they may accidentally touch, as vessels of war, and be there entitled to all the honours and privileges which the interests and importance of the service in which they are employed, demand.

They shall be exempted in those ports, as well on their entrance as on their departure, from all tonnage, navigation, and port dues, excepting, however, the vessels freighted by order of Government, which must pay such dues in those ports where they are levied on behalf of corporations, private companies, or private individuals.

They shall not be diverted from their especial duty—that is to say, the conveyance of the mails—by any authority whatever, or be liable to seizure, detention, embargo, or arrêt de prince. (Ils ne pourront être détournés de leur destination spéciale, c'est-à-dire du transport des dépêches, par quelque autorité que ce soit, ni être sujets à saisie, arrêt, embargo, ou arrêt de Prince.)

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ARTICLE VII.

The captains of the Belgian packets shall receive from the agents appointed for the service of exchange, the mails at Ostend and at Dover; the bags being closed and sealed.

The number of these bags and the time of their delivery shall be entered on a way-bill, which the captains or the officers entrusted under their orders with the care of the mails, shall deliver on their arrival to the office for which they are destined.

They shall bring back to the despatching office a certificate of the punctual delivery of the mails, delivered to them by the agent who shall have received them.

ARTICLE VIII.

Unless prevented by causes over which they have no control, the captains of the packets engaged in carrying the mails between Ostend and Dover shall proceed directly to their destination.

If in consequence of stress of weather or damage, they should be compelled to alter their course, and to put into any other port than Ostend or Dover, they must justify such deviation in the manner that their respective Offices shall deem advisable.

Whenever a packet conveying mails shall be compelled to put into any other than its destined port, the captain shall immediately deliver the mails to the local post-office, or forward them towards their destination, under the charge of an officer of the vessel.

ARTICLE IX.

* * * * *

ARTICLE X.

The mail packets shall be at liberty to take on board or land at Dover, as well as at other British ports where they may be obliged to put in, any passengers of whatever nation they may be, with their wearing-apparel and luggage, and also with their horses and carriages, on condition that the captains of the said packets shall conform to the regulations of the United Kingdom concerning the arrival and departure of travellers. They shall be prohibited from conveying goods or merchandize on freight, with the exception, however, of postal packets and small parcels the weight of which shall be limited by mutual agreement between the two Offices. (Ils ne pourront transporter aucune marchandise à titre de fret, à l'exception toutefois des colis postaux et des articles de messagerie dont le poids sera limité de commun accord entre les deux Administrations.)

ARTICLE XI.

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ARTICLE XII.

The captains of the packets specially engaged in the conveyance of the respective mails of the two Offices are forbidden to take charge of any letter not included in their mail bags, with the exception, however, of Government dispatches.

They must take care that no letters are conveyed illegally by their crews or passengers, and must give information in the proper quarter of any breach of the laws which may be committed in that respect.

ARTICLE XIII.

In case of war between the two nations, the mail packets shall continue their navigation without impediment or molestation, until a notification is made on the part of either of the two governments that the service is to be discontinued, in which case they shall be permitted to return freely, and under special protection, to the port in Belgium where they were fitted out.

ARTICLE XIV.

The British Government engages to pay annually to the Belgian Government, in consideration of the advantages which it derives from the double daily packet service between Ostend and Dover, viz. :

1. For the night service, the sum of four thousand pounds sterling ; and
2. For the day service the sum of five hundred pounds sterling.

These sums shall be paid quarterly to the Envoy Extraordinary and Minister Plenipotentiary of his Majesty the King of the Belgians at the Court of her Britannic Majesty.

It is understood that the British Government shall be at liberty to terminate such payment on giving to the Belgian Government a notice of at least six months ; and that even without such notice, the payment of either or both of the above-mentioned sums shall be lawfully discontinued at any time that the Belgian Government should cease to perform either a portion or the whole of the service.

ARTICLE XV.

The two governments engage to cause to be conveyed, by the means which the respective Post Offices employ for their own business, the closed mails which one of the Offices may wish to exchange, through the medium of the other Office, with countries which are not parties to the General Postal Union.

The one of the two Offices on whose account this conveyance shall take place, shall pay to the Office performing this service, in consideration of the distance traversed beyond the limits of the Union, rates which shall be determined by mutual agreement between them, and which shall not exceed the rates to be determined for the despatch of correspondence in open mails, in conformity with Article XI. of the Treaty of Berne, of the 9th of October, 1874.

ARTICLE XVI.

In order to secure the whole of the receipts upon the correspondence passing between the two countries, the British and Belgian Governments engage to prevent by every possible means the said correspondence being sent by any other way than by their respective Posts.

ARTICLE XVII.

The Post Offices of Great Britain and Belgium shall determine by mutual agreement, in accordance with the conditions laid down in the Treaty of Berne of the 9th of October, 1874, the matters of detail connected with the execution of the present Convention, as well as all other arrangements deemed necessary for regulating the postal regulations between the two countries.

ARTICLE XVIII.

The present Convention, which abrogates and takes the place of all previous postal arrangements concluded between Great Britain and Belgium, with the exception of those relating to Post Office money orders, shall come into force immediately after the exchange of the ratifications.

It is concluded for an indefinite period, each party reserving to itself the right to terminate it at any time upon giving at least twelve months' notice to the other party of its intention in this respect.

ARTICLE XIX.

The present Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done in duplicate, at London, the seventeenth day of February, in the year of Our Lord one thousand eight hundred and seventy-six.

(L.S.) DEBBY.

(L.S.) JOHN MANNERS.

(L.S.) SOLVYNS.

Feb. 25. The protest was brought on for argument together with the plaintiffs' motion for judgment.

In support of their motion the plaintiffs relied on affidavits which verified the allegations in the statement of claim, and alleged that search in the records at the offices of Her Majesty's customs in Dover, had been made for the dates of the voyages which the *Parlement Belge* had made between the ports of Ostend and Dover, between the 1st of January and the 31st of March, 1878; that by the said records it appeared that between such dates the *Parlement Belge* had made thirty voyages from Ostend to Dover and from Dover to Ostend respectively; that on twenty-nine of such voyages from Ostend to Dover, and on twenty-five of such voyages from Dover to Ostend, she had carried passengers and merchandise, in addition to the mails, and that, in addition to the mails, passengers and a general cargo had been carried by her on the voyage on which she was proceeding when the collision

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occurred. On the point that the *Parlement Belge* was engaged in commerce, the plaintiffs also relied on an affidavit filed on the 16th of February, 1879, in which George Henry Gregory deposed, in terms as follows:—

I did on the 8th of February, 1879, attend at the office of the Continental Daily Parcels Express, to make inquiries as to the conveyance of goods and merchandise from London to Belgium via Dover and Ostend, by the mail boats, and in reply to my inquiries, I was handed the exhibit marked with the letter A, hereunto annexed.

2. By a reference to page 5 thereof, it appears that the said Continental Daily Parcels Express has been in existence for the last thirty years, and further, that they ship their goods to Belgium by the mail-boat, via Ostend. I asked the gentleman in the office of the said Continental Daily Parcels Express whether there was any other means by which they sent to Belgium, and the reply was, "No, we can only ship by the mail boats, via Dover and Ostend."

3. By reference to page 9 of the exhibit A, it appears there is no limit as to size or weight of the parcels that are so shipped; the printed tariff on the said page going up to 200lbs., but stating as to the rate generally, as well as to the special rates to Ostend alone, that an additional charge is made for every 10 lbs. according to the tariff.

The nature of the exhibit referred to in the above affidavit appears from the judgment. The following copy (omitting immaterial portions) of the frontispiece of the same, may, however, be usefully set out here.

The Original
CONTINENTAL DAILY PARCELS EXPRESS,
known on the Continent as the Agence Continentale,
the Proprietor of which is by Special Convention
in direct correspondence with the Belgian Government Railway,
the Imperial Post of Germany,
the Federal Post of Switzerland,
and the Northern of France Railway,
for the conveyance by
THE GOVERNMENT MAIL PACKETS
via Dover, Ostend, and Calais,
of
Samples of every description, Papers, Plans, Books,
Articles for private use, Luggage
and Packages of all kinds, up to 200 lbs. weight,
between England and the Continent.
At fixed and moderate rates of Carriage and Insurance.

London: Chief Office, 53, Gracechurch Street,
1st February, 1879.

All former rates and conditions are withdrawn.

Webster, Q.C., and *W. G. F. Phillimore*, on behalf of the plaintiffs :—The plaintiffs have taken all the steps necessary under the practice of the Court in default causes, and unless the Crown are able to shew conclusively that the *Parlement Belge* was, when the collision occurred, exempt from the jurisdiction of this Court, they are entitled as of course to an order in the terms of their motion. The plaintiffs' affidavits prove that at the time of the collision the *Parlement Belge* was carrying cargo and earning freight, not as an exceptional case but in the ordinary course of her employment. The first point for the Court to decide on considering the question of jurisdiction must therefore be, whether the *Parlement Belge* has not, by assuming the character of a trader, waived any privilege of exemption from the jurisdiction of this Court to which her employment by the Belgian government might have otherwise entitled her: *The Charkieh* (1); *Taylor v. Best* (2); *The Constitution*. (3) Moreover, not only has the *Parlement Belge*, by carrying merchandise waived the privileges she now claims, but she has thereby expressly contravened the provisions of Article X. of the postal convention referred to in the protest, and shut herself out from any benefit to be derived from the provisions of the VIth article of the same. Still, although a decision on the question of waiver would dispose of the case, the plaintiffs cannot admit that, either by general international law or by virtue of the provisions of the convention, the *Parlement Belge* is exempt from process of law. By 3 & 4 Vict. c. 65, s. 6, and the Admiralty Court Act, 1861, 24 Vict. c. 10, s. 7, the legislature has conferred a statutory right on the owners of a ship damaged by a collision to obtain in this Court redress by proceedings in rem, and this statutory right extends to all cases, except where the enforcement of it would be an infringement either of the common law, of which the law of nations forms a part (Stephen's Blackstone, vol. 1, p. 489, note), or of some subsequent and inconsistent provision of the legislature. In the present case there is no difficulty in shewing that no infringement of international law would take place if the *Parlement Belge* should be arrested, for the privilege of exemption from process of law, which the vessels of a foreign prince enjoy by the

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(1) Law Rep. 4 A. & E. 59, 89.

(2) 14 C. B. 487.

(3) *Supra*, p. 39.

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comity of nations, is confined to vessels of war; in other words, to vessels which form part of the armed force of the nation: *The Exchange* (1); and a foreign state cannot, by describing a trading vessel belonging to it as a vessel of war, gain for her privileges which she would not otherwise possess. The case of *Morgan v. Larivière* (2) is material on this point, and shews that the property of a sovereign prince in this country is not necessarily privileged from process of law.

[They referred to *The Helen* (3); *The Bellona* (4); *The Cybele*. (5)]

If the plaintiffs are right in their contention that the *Parlement Belge* is not a vessel privileged from arrest by international law, the only question which remains is whether the jurisdiction of the Court has been ousted either by the provisions of a statute or by some act of the Crown, either sanctioned by the legislature or valid as the exercise of a power which the sovereign still legally possesses. It must, however, be assumed, that the convention of February, 1876, which is relied on as entitling the *Parlement Belge* to the treatment of a vessel of war, does not appear to have been sanctioned or confirmed by parliament; the validity of the convention as a whole can, therefore, be only supported on the ground that it is within the category of those treaties which by constitutional law are binding upon the subject without such sanction or confirmation. The onus of shewing that this is so rests upon the Crown. The Crown, in fact, must contend that those provisions of the treaty, which purport to confer a special immunity unknown to international law on the *Parlement Belge*, are not, so far as their operation would deprive a British subject of a right secured to him by statute, such as the right of action the plaintiffs claim in this case, *ultrà vires*. Such a contention is untenable, and the contrary proposition that it is not in the power of the sovereign of this country without the sanction of the legislature to contravene the provisions of an Act of Parliament, is supported by the authority of accredited writers on constitutional and international law. Thus it is stated in Wheaton's International Law (by Lawrence, ed. 1864), p. 457 :—

Commercial treaties, which have the effect of altering the existing laws of trade

(1) 7 Cranch, American Rep. 116.

(3) 3 Rob. 224.

(2) Law Rep. 7 H. L. 423, 430.

(4) Edw. 63.

(5) 2 P. D. 224; 3 P. D. 8.

and navigation of the contracting parties, may require the sanction of the legislative power in each state for their execution. Thus, the commercial treaty of Utrecht, between France and Great Britain, by which the trade of the two countries was to be placed on the footing of reciprocity, was never carried into effect; the British Parliament having rejected the bill which was brought in for the purpose of modifying the existing laws of trade and navigation, so as to adapt them to the stipulations of the treaty. In treaties requiring the appropriation of moneys for their execution, it is the usual practice of the British Government to stipulate that the king will recommend to parliament to make the grant necessary for that purpose.

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[On the same point, they also relied on Lord Mahon's History of England, vol. 1, p. 49; Halleck, International Law, ed. 1878, vol. 1, pp. 229, 232-238; Vattel, Droit de Gens, l. 2, c. 12, s. 154 (ed. 1830), and Field, International Code, tit. 4 ch. 14, s. 192, p. 80; Blackstone's Comm. (ed. 1844) vol. 1, bk. 4, ch. 7, p. 249.]

On the one hand, it must be admitted that with respect to some treaties relating to peace and war the power of the Crown to bind British subjects is uncontrovertible; but, on the other hand, it is no less true that there are certain treaties and conventions with foreign states which are of no force or validity unless confirmed by Parliament. In support of this proposition it will be sufficient for the plaintiffs to refer to the following Acts of Parliament, by which the legislature have either confirmed existing conventions or treaties, or have given power to the sovereign by order in council to render arrangements made by the Crown with foreign states binding on British subjects: the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), ss. 58, 59, 60, giving power to her Majesty to apply the regulations for preventing collisions at sea, the provisions of the English law as to life salvage, and the English rules of tonnage measurement, to foreign ships; the 22 Geo. 3, c. 46, to carry into effect a truce with the former colonies of the Crown in America; the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 1, giving her Majesty power by order in council to apply the provisions of that Act in the case of any foreign state; the Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), s. 37, giving her Majesty power to apply certain provisions of the Merchant Shipping Acts to foreign vessels; 7 Vict. c. 12, and 15 Vict. c. 12, relating to international copyright: 2 & 3 Vict. c. 96, and the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), ss. 6, 7, 66, relating to the sea fisheries on the coast of France

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and the exemption of sea fishing boats from dues; 35 & 36 Vict. c. 45, confirming the treaty of Washington; and 38 & 39 Vict. c. 22, confirming the postal treaty of Berne, which treaty is referred to in the treaty relied on in this case, and is to a great extent of a precisely similar character.

The convention in this case, if construed in the manner suggested, *i.e.* as taking away the right of the plaintiffs to recover damages in respect of the collision, is tantamount to a grant by the Crown that the King of the Belgians shall not be sued in this country; but such a grant is clearly void: Viner's Abridgment, Prerogative (Sc.); Comyns' Digest, Prærogative, D. 33; 2 Rolle's Abridgement, p. 201, pl. 45. The treaty in question ought to be construed liberally, and so as not to interfere with private rights; and if the treaty be so construed, it will be found that the language of Article VI. is fully satisfied, if its provisions are construed as solely referring to immunity from seizure by act of the Government: Cussey, Phases et Causes Célèbres du Droit Maritime des Nations, tome 1, liv. 1, tit. 2, s. 49, pp. 120, 121.

[They also referred to *Long v. Bishop of Capetown* (1), and *Attorney-General v. Bishop of Manchester*. (2)]

Sir H. S. Giffard, S.G., The Admiralty Advocate (Dr. Deane, Q.C.), and *Bowen*, on behalf of the Crown:—The *Parlement Belge* is not subject to the jurisdiction of this Court. The vessels to which the treaty of the 17th of February, 1876, applies are not ordinary traders. It is contemplated by the provisions of the Xth article of the treaty that they should carry postal packets, and the provisions of that article have not been contravened by the *Parlement Belge*, for up to the present time the post-offices there referred to have made no agreement as to the weight of the parcels to be carried; and even although the *Parlement Belge* may have infringed the provisions of the article, such infringement would not render the treaty invalid or at an end, but at the utmost would only lead to correspondence between the two governments concerned. The Court can put no other construction on the provisions of the VIth article of the treaty than that the words contained in it, taking all together, are amply sufficient to confer on the vessel proceeded against in this case, so

(1) 1 Moo. P. C. (N.S.) 411.

(2) Law Rep. 3 Eq. 436.

long as she is within a British port, all the privileges which by the comity of nations have been conferred on public national vessels. Among these privileges is the privilege of freedom from civil process of every description, a privilege which must be considered as given by the common law: 7 Anne, c. 12; *Triquet v. Bath* (1); and not only to such public national vessels as are armed, but to all other vessels which, like the *Parlement Belge*, belong to the sovereign of a foreign state in his public capacity. It follows as a consequence that, even apart from the postal treaty with Belgium, the *Parlement Belge* must be free from arrest in this action: *The Exchange*. (2) Whatever may be the effect of the treaty in question here, and for the purposes of the present case its provisions must be held to be not *ultrà vires*, it clearly affords evidence on what terms the *Parlement Belge* came within the jurisdiction of this Court—that is to say, under an implied licence that she would be treated in all respects as a vessel of war. How can the terms of this licence be disregarded by this Court? The plaintiffs have cited numerous instances of treaties confirmed by Parliament, but the fact that other treaties have been so confirmed by no means proves that this treaty requires confirmation before its provisions can become binding on British subjects.

The treaty of February, 1876, in effect declares that the *Parlement Belge* is a public vessel owned by the government of Belgium, and that by reason of this circumstance she has become entitled by international law to be treated as if she was a vessel of war. Surely it was competent for Her Majesty to make such a declaration? and such a declaration having been made, is this Court to be at liberty to treat it as of no validity? Whether a vessel be armed or not, she is equally privileged by the comity of nations, if she belongs to a sovereign prince in his public capacity: *The Prins Frederik* (3); *De Haber v. The Queen of Portugal* (4); Wheaton, *International Law* (by Lawrence, ed. 1864), p. 196; *The Exchange* (2); *The Santissima Trinidad* (5); *Briggs v. The Light Ships*. (6) Can it be said that the unarmed yacht of

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(1) 3 Burr. 1478.

(2) 7 Cranch, 116.

(3) 2 Dod. 451.

(4) 17 Q. B. 171.

(5) 7 Wheat. 283.

(6) 11 Allen (Massachusetts) 157.

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the King of the Belgians would not be privileged from arrest in our ports? The American frigate *Constitution*, though carrying cargo, was recently held by this Court entitled to the immunity of a vessel of war on the ground that she was engaged in a public employment. (1) On this point the decision in the case of *The Charkieh* (2) may also be cited in favour of the Crown, for there the Court thought it necessary, even though the vessel was a trader, to inquire whether she belonged to a sovereign prince. If the plaintiffs succeed it will be the first time in the history of this country that a foreign vessel, invited into our ports under an implied promise of immunity from process of law, has been subjected in invitum to the jurisdiction of this Court.

The main contention on behalf of the plaintiffs has been that the treaty-making power of the Crown is inoperative except when the subject matter of the treaty relates only to peace or war, but this contention cannot be supported either on principles of constitutional or of international law. It may indeed be conceded that there are some treaties which, so far as municipal law is concerned, may not be binding on British subjects until they are ratified by Parliament, but whether a particular treaty is or is not binding on the subject *proprio vigore* can only be ascertained by examination of how far each provision contained in it is effectual in law. For this reason the argument that certain specified treaties have been confirmed by the legislature must be of little or no value. In the present case the treaty before the Court is an act of state emanating from the sovereign, and determining the diplomatic status of the vessels described in it. As such an act of state it is binding on this Court, and on all subjects of the Crown, without the confirmation of Parliament; and inasmuch as the *Parlement Belge* has clearly brought herself within its provisions, it must be the duty of the Court to accord her all the privileges which are incidental to the status thereby conferred on her.

That it is within the province of the sovereign alone to determine the status of foreign powers and things is a proposition of constitutional law which will scarcely be denied. Indeed, how else can the Courts of this country be rightly informed on such subjects? For, to use the words of Blackstone: "It is evident

(1) Ante, p. 39.

(2) Law Rep. 4 A. & E. 59.

that with regard to foreign concerns the sovereign is the delegate or representative of his people, and what is done by the royal authority is the act of the nation, what is done without the royal concurrence is the act of private men:" 2 Stephen's Blackstone (ed. 1863), p. 506. On this point the authority of Lord Coke is most pertinent, for in a passage relating to the enrolment of leagues and safe conducts, he certainly assumes that the king possesses the power of deciding what aliens shall have the status of suitors in our courts, thereby affording a complete illustration of the legality of the power which the Crown claims to have exercised in this case: 4 Inst. ch. 26, p. 152. For other illustrations it is only necessary to refer to the undoubted power which the sovereign alone possesses with respect to the recognition of foreign governments and the status of belligerents: *The City of Berne v. The Bank of England* (1); *The Columbian Government v. Rothschild* (2); *The United States of America v. Wagner* (3); *The Cherokee Nation v. The State of Georgia* (4); Wheaton, International Law (by Lawrence, ed. 1864), pt. i. ch. ii. p. 40; Proclamation as to the war between the United States and the Confederate States of America: British and Foreign State Papers, vol. 51, p. 165. The power of the Crown with respect to licences to trade with the enemy, the definition of what articles ancipitis usûs are to be considered contraband of war, the legitimization of foreign coin (Chitty on the Prerogative, p. 199), and the recognition of diplomatic officers, may also be instanced as examples of acts of state not deriving their validity from the confirmation of the legislature. The declaration of Paris with respect to maritime belligerent rights (Hertslet's Treaties, vol. 10, p. 547) is a far greater exercise of the power which is by the constitution vested in the sovereign than the exemption of the public vessel of a friendly nation from arrest.

It cannot be that the power of the Crown in this respect can have been affected by the statutes giving the subject a right to proceed in this Court. All such statutes must be read salvo jure regio, and their provisions can in no wise affect the question as to the right of the Crown to enter into any treaty, or the validity of

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(1) 9 Ves. 347.

(2) 1 Sim. 94.

(3) Law Rep. 2 Ch. 582.

(4) 5 Peters, 1.

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its operation when made. The plaintiffs contend that the *Parlement Belge* cannot claim any immunity from arrest, inasmuch as she has contravened the provisions of the treaty conferring on her such immunity. The principles of the municipal law which govern the contracts of private individuals cannot, however, be rightly applied to treaties, and indeed it is a well-known proposition of international law that a treaty does not, in consequence of the breach of its provisions, become void, but that it is merely voidable at the option of the contracting parties: 1 Halleck, Int. Law, 268 (ed. 1878); 1 Kent, Comm. 175 (ed. 1873). It cannot be in accordance with public policy that vessels like the *Parlement Belge*, belonging to a foreign government, and maintained by that government expressly for the purposes of the postal service, should be liable to arrest by process of law.

Webster, Q.C., was again heard on behalf of the plaintiffs.

Sir H. S. Giffard, S.G., replied on the whole case. (1)

Cur. adv. vult.

March 15. SIR ROBERT PHILLIMORE. In this case questions of international and public law of the gravest importance have been raised.

The Court has to acknowledge the great assistance which it has derived from the learned and able arguments of counsel, especially valuable in a case which is, I believe, *primæ impressionis*, and which must be decided upon general principles and analogies of law, rather than upon any direct precedent. In the month of February, 1878, the owners of the steam-tug *Daring* served a writ on board the steamship *Parlement Belge* against the owners of that vessel and her freight, in which they claimed the sum of 3500*l.* for damage, arising out of a collision which occurred between that vessel and the steam-tug *Daring* on the 14th of February, 1878, off Dover.

The defendants put in no appearance, and took no steps whatever. The plaintiffs have proceeded by default, and taken the usual and proper course, and the case being on the 25th of January

(1) The counsel for the plaintiffs objected to the Solicitor General being heard in reply, on the ground that the Crown was not a party to the suit, but the objection was overruled by the Court.

in this year ripe for judgment, the plaintiffs gave notice on the 4th of February that the Court would be moved to direct judgment with costs to be entered for them in respect of the damages so claimed, and that the usual order of reference to the registrar and merchants might be made, and that a warrant should issue, the action being in rem, against the steamship *Parlement Belge*.

Having looked at the papers and pleadings, I perceived that the arrest of the ship and the judgment which were prayed, might affect the prerogative of the Crown and its relations with a foreign state; I therefore directed that notice should be given to the law officers, in order that they might have an opportunity, if they thought fit, of shewing cause against the prayer of the plaintiffs.

The Attorney General has appeared and filed what is called an "information and protest," the material part of which I will now read. [His Lordship here read the first six paragraphs of the information and protest.] I have had the advantage of an argument from the Solicitor General on the whole case. The protest of the Attorney General raises a question of constitutional law and a question of international law, both of great moment, and which I will endeavour to consider separately.

By this protest it is in substance contended that this steamship *Parlement Belge* is not amenable to the process of this Court, first, on the ground that she is the property of the King of the Belgians, and at the time of the collision was controlled and employed by him. Secondly, that her Majesty the Queen, by a convention with the King of the Belgians, has placed this packet-boat in the category of a public ship of war. I will endeavour to deal with these questions in the order in which I have stated them, though perhaps they cannot be kept quite distinct.

It is expedient to make a preliminary observation, which is important in its bearing upon one, if not both, of the questions.

The collision in this case took place in Dover Bay, that is, within the body of a county, and therefore previously to the year 1840, this Court would have had no jurisdiction in the matter; but by the joint operation of the statutes 3 & 4 Vict. c. 65 and 24 Vict. c. 10, this Court was given a jurisdiction both in rem and in personam in cases where the collision happened in the body of a county as well as when upon the high seas.

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It follows, therefore, that the plaintiffs in this suit have a statutable right of action against the *Parlement Belge*, unless that vessel be of that privileged class which is not amenable to a court of law.

The burden of proving that she does belong to this class lies upon the defendant [—at present upon the Attorney General—] more especially as it appears from the papers before me that she was engaged in carrying on commerce, howsoever limited in its nature, at the time of this collision.

I turn now to the consideration of the first question raised in the protest. I had occasion to consider most, if not all, of the authorities upon this point in the case of *The Charkieh*. (1) I desire to state at once that in my opinion every public ship of war belonging to a state in amity with her Majesty is exempt from the jurisdiction of this Court. This proposition I maintained in the recent case of *The Constitution* (2); it has been laid down in a variety of cases adjudicated both in our Courts and in those of the United States of North America (which will be found collected in *The Charkieh* (1), and in the case of *Briggs v. The Light Boats* (3), decided in the Supreme Court of Massachusetts); and it may be considered, notwithstanding certain dicta in the case of *The Prins Frederik* (4), to be firmly rooted in the jurisprudence of both these countries.

It has been also contended on the part of the Crown, not that the *Parlement Belge* is a ship of war, in the general international sense of that word, but that she is privileged as a mail-packet, the property of the Crown of Belgium, carrying the royal pennon, and officered by commissioned officers of the Royal Belgian navy. On the other hand, it must be taken that she is not a public-armed ship constituting a part of the military force of her nation, nor is she a vessel, so to speak, of pleasure belonging to the Crown, and on that ground perhaps by the comity of nations in the class of privileged ships. In the case of *The Charkieh* (1) I said:—

I am not prepared to deny that the private vessel (for instance, the yacht of the Sultan), though equipped for pleasure and not for war, would be entitled by

(1) Law Rep. 4 A. & E. 59.

(2) Ante, p. 39.

(3) 11 Allen, Mass. Reps. 157.

(4) 2 Dods. 451, 464.

international comity operating (at least, so long as it is not withdrawn by the state conceding it), as international law to the same immunity as a ship of war, though dicta to the contrary may be found in the writings of some jurists.

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Since that time I have not found reason to alter the opinion I then expressed. The especial duty of the *Parlement Belge* (to borrow the terms of the treaty to which I will presently advert) is the conveyance of the mails. But though such be the especial duty of the packet, it is by no means its sole occupation. Mr. Gregory has made an affidavit in the following words:—

1. That I did on the 8th day of February, 1879, attend at the office of the Continental Daily Parcels Express, to make inquiries as to the conveyance of goods and merchandize from London to Belgium, viâ Dover and Ostend, by the mailboats, and in reply to my inquiries I was handed the exhibit marked with the letter A, hereunto annexed.

The exhibit referred to is a sort of time and charge table relative to the conveyance by the government mail packets viâ Dover, Ostend, and Calais, of samples of every description, papers, plans, books, articles for private use, luggage, and packages of all kinds up to 200lbs. weight between England and the Continent, viz., France, Belgium, &c.

[His Lordship proceeded to read the second and third paragraphs of Mr. Gregory's affidavit as above set out, and proceeded:—]

The *Parlement Belge*, it would appear, is neither a public ship of war nor a private vessel of pleasure belonging to the Crown of Belgium, nor is she a public ship sent by the government on an exploring expedition, like those ships employed in the Arctic expeditions, all of which ships belonging to England, were, it should be observed, regularly commissioned as ships of war, as I am informed by the Admiralty, with the exception of the *Lady Franklin* and *Sophia*, hired in 1850–51, by the Admiralty and commanded by Captains Penny and Stewart, who were not naval officers. These two vessels were not considered to be entitled to the privileges of ships of war, nor, of course, were the various private vessels fitted out from time to time for exploring the Arctic regions. The *Parlement Belge* is a packet conveying certain mails and carrying on a considerable commerce, officered, as I have said, by Belgian officers and flying the Belgian pennon.

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Can such a vessel so employed be entitled to the privileges of a public ship of war? The analogy between the immunity of the ambassador and the ship of war is obvious. It has been holden by high authorities, both in this and other countries, that an ambassador may lose his privileges by engaging in commerce. Indeed, Lord Campbell was of opinion that in "such a case 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:" *The Magdalena Steam Navigation Co. v. Martin* (1), cited in *The Charkieh*. (2) "A distinction," says Mr. Justice Story, ". . . has been often taken by writers on public law as to the exemption of certain things from all private claims—as, for example, things devoted to sacred, religious, and public purposes, things extra commercium et quorum non est commercium. That distinction might well apply to property like public ships of war held by the sovereign jure coronæ, and not be applicable to the common property of the sovereign of a commercial character or engaged in the common business of commerce": *The United States v. Wilder* (3); *The Charkieh*. (2) In *The Santissima Trinidad* (4), a case of prize, Judge Story said:—

The commission, therefore, of a public ship, when duly authenticated, so far at least as foreign courts are concerned, imports absolute verity, and the title is not examinable. The property must be taken to be duly acquired, and cannot be controverted. This has been the settled practice between nations; and it is a rule founded on public convenience and policy, and cannot be broken in upon without endangering the peace and repose as well of neutral as of belligerent sovereigns. The commission in the present case is not expressed in the most unequivocal terms; but its fair purport and interpretation must be deemed to apply to a public ship of the government (at page 336).

Looking to the character of the suit and to other passages in the judgment, it seems to me clear that by the expression "public ship of the government" was meant a ship of war, and not any vessel employed by the government. But even if the term could be treated as more comprehensive and as including public ships such as I have referred to sent by the government on exploring expeditions, it would not include a vessel engaged in commerce,

(1) 2 E. & E. 94, 114; 28 L. J. (Q.B.) 310.

(2) Law Rep. 4 A. & E. 59.

(3) 3 Sumner, 315.

(4) 7 Wheat. 283.

whose owner is (to use the expression of Bynkershoek, *De Leg. Mercatore*) “strenuè mercatorem agens.” (1)

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Upon the whole, I am of opinion that neither upon principle, precedent, nor analogy of general international law, should I be warranted in considering the *Parlement Belge* as belonging to that category of public vessels which are exempt from process of law and all private claims.

I now approach the consideration of the second question, viz., whether the convention between her Majesty and the King of the Belgians, ratified on the 24th of March, 1876, does, so far as this country is concerned, place the *Parlement Belge*, while in British ports, in the category of a public ship of war and exempt her from the process of an English Court.

I may observe in passing that the very fact, that this packet is in terms given by the convention the privileges of a ship of war in British ports and there only, tends to shew that she had not such privileges by general international law, and that a convention was deemed necessary to confer them.

It is admitted that this convention has not been confirmed by any statute; but it has been contended on the part of the Crown both that it was competent to her Majesty to make this convention, and also to put its provisions into operation without the confirmation of them by Parliament. The plaintiffs admit the former, but deny the latter of these propositions.

The power of the Crown to make treaties with foreign states is indisputable. Passing by other authorities, I will cite the language of Blackstone, who was not disinclined to maintain the prerogative of the Crown. He says:—

It is also the king's prerogative to make treaties, leagues, and alliances with foreign states and princes, for it is by the law of nations essential to the goodness of a league that it be made by the sovereign power; and then it is binding upon the whole community; and in England the sovereign power, quoad hoc, is vested in the person of the king. Whatever contracts, therefore, he engages in, no other power in the kingdom can legally delay, resist, or annul. And yet, lest this plenitude of authority should be abused to the detriment of the public, the constitution, as was hinted before, hath here interposed a check, by the means of Parliamentary impeachment, for the punishment of such ministers as from

(1) Corn. van. Bynkershoek, *De Fero Legatorum*, ch. xiv. (*De Legato Mercatore*) p. 165 (ed. 1767).

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criminal motives advise, or conclude any treaty, which shall afterwards be judged to derogate from the honour and interest of the nation: Blackstone's Commentaries, vol. 1, p. 256 (ed. 1844), c. 7, s. 2.

The learned writer, however, was certainly aware that this general proposition must receive some modification and restraint besides that which he has mentioned. Blackstone must have known very well that there were a class of treaties the provisions of which were inoperative without the confirmation of the legislature; while there were others which operated without such confirmation. The strongest instance of the latter, perhaps, which could be cited is the Declaration of Paris in 1856, by which the Crown in the exercise of its prerogative deprived this country of belligerent rights, which very high authorities in the state and in the law had considered to be of vital importance to it. But this declaration did not affect the private rights of the subject; and the question before me is whether this treaty does affect private rights, and therefore required the sanction of the legislature.

The authority of Chancellor Kent was relied on. That learned writer observes:—

Treaties of peace, when made by the competent power, are obligatory upon the whole nation. If the treaty requires the payment of money to carry it into effect, and the money cannot be raised but by an Act of the legislature, the treaty is morally obligatory upon the legislature to pass the law, and to refuse it would be a breach of public faith. Kent's Comm. vol. i. p. 166 (ed. 1873).

And he further observes:—

There can be no doubt that the power competent to bind the nation by treaty may alienate the public domain and property by treaty.

He then refers to the case of *The United States v. The Schooner Peggy* (1) decided by the Supreme Court of the United States. That was a case of prize capture in which the vessel had been condemned, but subsequently a treaty had been made between France and the United States by the terms of which the prize was, among others, restored to its original owner. The Court of Appeal in that case held the treaty to be binding upon it, and indeed said “. . . that where a treaty is the law of the land, and as such affects the rights of parties litigating in Court, that treaty as much binds those rights, and is as much to be regarded by the Court as

(1) 1 Cranch, 103.

an Act of Congress. . . .” (1) But the sentence in that case was founded upon the powers of the President, with the consent of the Senate, to make a treaty affecting the rights of a captor, in time of war, and the judgment was given upon that point. The Court said : “It is true that in mere private cases between individuals a Court will, and ought to, struggle hard against a construction which will, by a retrospective operation, affect the rights of parties; but in great national concerns, where individual rights, acquired by war, are sacrificed for national purposes, the contract making the sacrifice ought always to receive a construction conforming to its manifest import; and if the nation has given up the vested rights of its citizens, it is not for the Court, but for the government to consider whether it be a case proper for compensation,” The whole sentence is founded upon the right of the American executive with respect to prize of war.

The like question arose in England in the famous case of *The Elsebe* (2), in which Lord Stowell said :—

Prize is altogether a creature of the Crown. No man has or can have any interest but what he takes as the mere gift of the Crown. Beyond the extent of that gift he has nothing. This is the principle of law on the subject, and founded on the wisest reasons. The right of making war and peace is exclusively in the Crown. The acquisitions of war belong to the Crown; and the disposal of these acquisitions may be of the utmost importance for the purposes both of war and peace.

Lord Chancellor Brougham, in the case of the booty captured by the army of the Deccan (3), referred to *The Elsebe* (4) as undoubted law, observing that it was therein determined that when the Crown saw “fit to restore the capture, the captors, who had run the risk and suffered the loss, who had moreover borne the charge of bringing the prize into port and the further costs of proceedings in the Admiralty to adjudication, and had even undergone additional expenses in contesting their claim upon appeal, were altogether without a remedy. Lord Brougham says in the same judgment :—

The title of a party claiming prize must needs in all cases be the act of the Crown, by which the royal pleasure to grant the prize shall have been

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(1) At p. 110.

(2) 5 Rob. 173.

(3) *Nom. Alexander v. The Duke of Wellington*; 2 Russ. & My. 54.

(4) 5 Rob. 174.

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signified to the subject. Whether, where that act has once been completed, and it distinctly appears that the Crown was minded to part with the property finally and irrevocably—whether even in that case the same paramount and transcendent power of the Crown might not enure to the effect of preserving to his Majesty the right of modifying, or altogether revoking, the grant is a question which has never yet arisen, and which when it does arise will be found never to have been determined in the negative. But this, at all events, is clear, that when the Crown, by an act of grace and bounty, parts, for certain purposes, and subject to certain modifications, with the property in prize, it by that act plainly signifies its intention that the prize shall continue subject to the power of the Crown as it was before the act was done.

The judgment in the case of *The United States v. The Schooner Peggy* (1) does not establish the proposition that the Crown can dispose of the rights of a subject without the sanction of parliament. A treaty may contain provisions which are *ultra vires* of the prerogative, in part valid and operative, and in part invalid and inoperative. A treaty is, indeed, not necessarily void by reason of the infraction of some of its conditions though it may be voidable; and the validity of it cannot be challenged, speaking generally, by any private person; but a court of justice when called upon to execute the provisions of a treaty may, at the instance of the subject, who is affected by them, examine whether those provisions are such as to be capable of legal enforcement, just as it may inquire into the validity of letters patent granted by the Crown: *Long v. Bishop of Capetown* (2); and also into the validity of an order in council, duly passed and gazetted: *Attorney General v. Bishop of Manchester*. (3) There have been, not to go further back, during the reign of her present Majesty, various treaties confirmed by parliament; and by statute power has been given to the Crown by order in council to do certain things which it must be presumed without such power it could not have done,—for instance, the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), empowers the Crown by order in council to make rules and regulations respecting collisions and salvage services to be binding on the ships of foreign states; the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), relating to a convention between France and England as to sea fisheries, and reciting (in s. 66) that doubts had arisen whether part of the convention between the United Kingdom and France of the 26th

(1) 1 Cranch, 103.

(2) 1 Moo. P. C. (N.S.) 411.

(3) Law Rep. 3 Eq. 436.

of January, 1826, relating to exemption from dues had been confirmed by parliament, proceeded to give such confirmation; and to provide that where any similar convention should thereafter be concluded with any foreign country her Majesty should have power by Order in Council to confer exemption from dues on sea fishing vessels belonging to such foreign country; the 35 & 36 Vict. c. 45, A.D. 1872, confirms the treaty of Washington between the United States and England, and as will presently be seen the very treaty of which this Belgian treaty is a sequel was confirmed by statute. Some of the treaties confirmed relate to the payment of and exemption from dues in harbours; one more, and not an insignificant one, will presently be added. I mention them merely as illustrative of the position that certain treaties do require Parliamentary confirmation. I now turn to the provisions of the treaty which have been relied upon in this case. In the preamble it is said that—[His Lordship here read the preamble of the treaty in question.] The treaty of Berne referred to, and to which this Belgium treaty of 1876 is to form a sequel, being concluded in the year 1874 was specially confirmed by a statute passed in 1875, 38 & 39 Vict. c. 22, the preamble of which is as follows:—

Whereas under the Post Office Duties Acts, 1840 to 1871, divers powers are given to the Treasury of fixing by warrant the rates of British, foreign, and colonial postage.

And whereas by a treaty made at Berne, on the 9th day of October, 1874, and detailed regulations made under it, various stipulations, and regulations have been made with respect to the duties of postage and other matters connected with the exchange by post with foreign countries, of letters, post-cards, books, newspapers, and other printed papers, patterns of merchandise, and legal and commercial documents.

It goes on as follows:—

And whereas such treaty and regulations cannot be carried into effect except by the authority of Parliament, and it is expedient to give such authority and to comprise in one Act the powers of the Treasury in relation to fixing the rates of postage: Be it therefore enacted, &c.

The statute then proceeds to enact a variety of provisions relating to the duties on postage, and the post office, and provides by sect. 2 for future arrangements with foreign countries with respect to the conveyance of postal packets, and payments by the Treasury.

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This clause may perhaps suffice to render legally operative the clauses in the subsequent Belgian treaty relating to these particular matters. I find in that treaty a variety of enactments relating to the conveyance of mails between Great Britain and Belgium. By the 10th Article it is provided that—

[His Lordship here read the 10th Article of the treaty in question.]

It is the 6th Article however, which has the most important bearing on this case, and which has been chiefly discussed at the Bar. It is as follows:

[His Lordship read the 6th Article of the treaty.]

With respect to the interpretation of the last clause of this article, it was agreed by counsel, and I am of the same opinion, that the words seizure, detention, embargo, or arrêt de prince, related to the belligerent rights of the Crown, including the droit d'angarie.

With respect to the other clauses of the article, I think it cannot be denied that they purport and intend to place this Belgium packet in the category of a ship of war while in a British port. It is remarkable that this privilege is not, by the words of the article, extended to these packets in territorial waters, nor so far as even British ships are concerned, to the high seas, and does not give them when on the high seas an immunity from actions for salvage and collision happening out of a port. Of course the treaty cannot constitute these packets ships of war in their relation to foreign states.

If the Crown had power without the authority of parliament by this treaty to order that the *Parlement Belge* should be entitled to all the privileges of a ship of war, then the warrant, which is prayed for against her as a wrong-doer on account of the collision, cannot issue, and the right of the subject, but for this order unquestionable, to recover damages for the injuries done to him by her is extinguished.

This is a use of the treaty-making prerogative of the Crown which I believe to be without precedent, and in principle contrary to the laws of the constitution. Let me consider to what consequences it leads. If the Crown without the authority of parliament, may by process of diplomacy shelter a foreigner from the

action of one of her Majesty's subjects who has suffered injury at his hands, I do not see why it might not also give a like privilege of immunity to a number of foreign merchant vessels or to a number of foreign individuals. The law of this country has indeed incorporated those portions of international law which give immunity and privileges to foreign ships of war and foreign ambassadors; but I do not think that it has therefore given the Crown authority to clothe with this immunity foreign vessels, which are really not vessels of war, or foreign persons, who are not really ambassadors.

Let me say one word more in conclusion. Mr. Bowen, in his very able speech, dwelt forcibly upon the wrong which would be done to this packet if, being invited to enter the ports of this country with the privileges of a ship of war, she should find them denied to her. I acknowledge the hardship, but the remedy, in my opinion, is not to be found in depriving the British subject without his consent, direct or implied, of his right of action against a wrong-doer, but by the agency of diplomacy, and proper measures of compensation and arrangement, between the Governments of Great Britain and Belgium. I must allow the warrant of arrest to issue.

With regard to the rest of the motion, I give judgment in the terms of the notice of motion for the costs of the action other than the costs incident to the present motion, and for a reference to the registrar and merchants.

Solicitors for plaintiffs: *Lowless & Co.*

Agents for Treasury Solicitor: *Hare & Fell.*

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