Commentaries upon international law.
The original of this book is in the Cornell University Library.

There are no known copyright restrictions in the United States on the use of the text.

http://www.archive.org/details/cu31924007476199
LONDON: PRINTED BY
SPOTTISWOODS AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET
COMMENTARIES
UPON
INTERNATIONAL LAW.

BY
SIR ROBERT PHILLIMORE, D.C.L.
MEMBER OF HER MAJESTY'S MOST HONOURABLE PRIVY COUNCIL, AND
JUDGE OF THE HIGH COURT OF ADMIRALTY.

"Legum denique idcirco omnes servi sumus, ut liberi esse possumus."—Cicero,
pro A. Cluent. § 53.

"Il y a dans la sainteté du droit méconnu une force immortelle qui appuie
mysterieusement et invinciblement à la longue les revendications pacifiques et
les protestations solennelles de la conscience humaine. Et, grâce en soit rendue
au Dieu qui nous a faits! c'est l'honneur de l'humanité que la force brute ne
décide pas toujours tout ici-bas."—Mgr. Dupanloup dans l'Assemblée Nationale,
22 Juillet 1871.

"The various Transactions and Concordats between Sovereigns and the See of
Rome;—a succinct and impartial history of them is wanting: the papal arrange-
ments with Bonaparte would not be the least curious part of such a work."—
Horn Juridicos Subsecivw, by CHARLES BUTLER (1804), p. 118.

VOL. II.


LONDON:
BUTTERWORTHS, 7 FLEET STREET,
Into Publishers to the Queen's Most Excellent Majesty.
HODGES, FOSTER, & CO., GRAFTON STREET, DUBLIN.
1871.
PREFACE.

I.

Since the publication, last year, of the Second Edition of the First Volume of these Commentaries two new Treaties have become part of positive International Law.

To both of them England has been a contracting party; and both are of grave importance to the commonwealth of States, as to their immediate consequences and as to the principles which they contain. The consideration of them belongs more properly to the former volume; but in the circumstances it appears to me expedient to draw attention to the general character of them here, and to place the Treaties themselves at length in the Appendix to this volume.

II.

The first Treaty relates to the navigation of the Black Sea, altering with respect to this subject the conditions of the Treaty of 1856. The alteration itself is important; but still more important was the
adoption by the Conference, which met to consider the question, of the resolution, proposed by Lord Granville, namely, "That the Powers recognise that it " is an essential principle of the Law of Nations that " none of them can liberate itself from the engage- " ments of a Treaty, nor modify the stipulations " thereof, unless with the consent of the contracting " parties by means of an amicable understanding."

The circumstances which rendered the assertion of this cardinal principle necessary will be found at pp. 72–74 of this volume (a).

III.

The recent Treaty of Washington had for its object to settle more especially the claims preferred by the United States against England on account of the captures made by the "Alabama." In the Preface to the last edition of the first volume of these Commentaries, I observed:

"The dispute which unhappily arose between " England and the United States, in consequence of " the escape of the ship 'Alabama' from British " territory and her subsequent employment as a ship " of war by the Southern Confederates is, I deeply " regret to say, still open. I will only say in this " place, that no English jurist could object to have " that dispute decided upon the principles of law

(a) See also Debates in the House of Lords, in March 1871.
laid down, harmoniously, I think, on the whole, by the tribunals of the United States and England, and by reference to the public Acts and documents of both countries" (b).

The English Government sent a Commission composed of distinguished and learned persons to Washington for the purpose of adjusting these claims, the result of which has been the Treaty above mentioned. By it certain Arbitrators are appointed, and the rules of International Law by which they are to be guided are thus stated in the Treaty:

"A neutral government is bound, First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own

(b) Preface to vol. i. p. xxix.
“waters, and as to all persons within its jurisdiction, "
“to prevent any violation of the foregoing obliga-
“tions and duties.”

Nevertheless, the British plenipotentiaries are ordered “to declare that Her Majesty's Government
“cannot assent to the foregoing rules as a statement
“of principles of International Law which were in
“force at the time when the claims mentioned in
“Article I. arose, but that Her Majesty’s Govern-
“ment, in order to evince its desire of strengthening
“the friendly relations between the two countries
“and of making satisfactory provision for the future,
“agrees that, in deciding the questions between the
“two countries arising out of those claims, the
“Arbitrators should assume that Her Majesty’s
“Government had undertaken to act upon the prin-
“ciples set forth in these rules.”

Then follows this important stipulation:
“ And the High Contracting Parties agree to
“observe these rules as between themselves in future,
“and to bring them to the knowledge of other
“maritime Powers, and to invite them to accede to
“them.”

But this last stipulation does not yet form part of
the Municipal Law of the United States, whereas it
does form part of English Municipal Law, being
contained in the “Foreign Enlistment Act” of last
year (c).

(c) 33 & 34 Vict. c. 90. See Appendix to vol. i. and Preface, pp. xxii-xxix.
This observation loses none of its force when the fact is recollected, that this remarkable change in our law was one which the English Government was willing to make during the civil war in America, if the United States would then have consented to proceed pari passu; but at that time they declined to make, nor have they as yet made, any similar change in their Municipal Law. It is, of course, to be presumed that they will now do so. But, upon the whole, the Treaty must be considered as containing a remarkable concession by England to America. Never before, in a dispute between States submitted to arbitration, did one State admit rules of International Law, which were not recognised by the party complaining or complained of at the time when the subject of complaint arose, to govern the decision as to the justice of that complaint. Such an admission could not have been demanded by any maxim derived from general jurisprudence or International precedent. It must be considered by the International jurist as an act of pure diplomacy carrying into effect a measure of State policy—that measure being founded upon the opinion that a durable peace would be secured between England and America by the sacrifice of her right which the former State embodied in this Treaty, and that this result was worth the sacrifice (d).

(d) See Debates in the Houses, of Lords (June 12), of Commons (August 8).
IV.

Two cases have been decided by the High Court of Admiralty (e) upon the construction of the Foreign Enlistment Act of 1870.

In the case of the "International" the facts were these:

During the war between France and Germany an English Company contracted with the French Government to lay down in the sea a series of telegraph cables between certain places on the French coast. The places on the coast between which the cables were to be laid were so situate that, by means of short telegraphic lines carried over land, the series of cables could be united in one line, and be made to afford complete telegraphic communication between Dunkerque and Bordeaux, in such a manner that the line might be partially used for effecting communication between the different French armies, if it were completed in time. The Company, having shipped the telegraph cables on board a steam-ship belonging to them, specially fitted for the purpose of laying submarine cables, were, during the war, about to dispatch the steam-ship from London to lay down the cables according to the contract; when the steam-

(e) The American jurist Mr. W. B. Lawrence, among other observations on this Act, remarks: ' Jurisdiction in cases under the Act is given to the Court of Admiralty, which is not the least important amendment of the law.' (The Treaty of Washington: Letters from Hon. W. B. Lawrence, LL.D. Providence: Hammond & Co. 1871, p. 19.)
ship was, by order of the Secretary of State for Foreign Affairs, detained, upon the ground that it was about to be dispatched contrary to the Foreign Enlistment Act, 1870. On motion for the release of the ship, it was proved, to the satisfaction of the Court, that the undertaking in which the ship was about to be engaged was primarily of a commercial character; that the object of the contract was to furnish ordinary postal telegraphy, and that the Company were not parties to any project for adapting the line of cables to military purposes: thereupon it was holden that the Company were entitled to have the ship released.

In the case of the "Gauntlet," a French man-of-war had, during the war, put into the Downs, with a prize, through stress of weather. The man-of-war soon after sailed, leaving the prize with a prize-crew on board. The French Consul at Dover, being informed by the Collector of Customs, on behalf of the British Government, that the prize must not remain in English waters, procured an English steam-tug, which towed the prize to Dunkerque. The service appeared to have been treated by all parties as an ordinary towage, and only the ordinary price for towage was paid to the steam-tug. The Crown proceeded against the steam-tug for having been employed in the military or naval service of France. It was holden however that, in the circumstances, she had not been so employed within the meaning of the Act, and the suit was dismissed.
V.

The decision on the law of Piracy given by the Judicial Committee of the Privy Council in the case of the "Telegrafo" or "Restauracion" should also be noticed here.

It was holden in this case that there was no authority for the position that a piratical ship, sold before any proceedings for piracy had been taken on the part of the Crown against her, by public auction, to a bona fide and innocent purchaser, can be afterwards arrested and condemned, on account of former piratical acts, to the Crown; and that the taint of piracy does not, in the absence of conviction or condemnation, continue, like a maritime lien, to travel with the ship through her transfers to various owners.

VI.

The Part of this volume devoted to the International status and relations of Foreign Spiritual Powers, and especially of the Pope, has undergone considerable revision and addition, both in the Text and in the Appendix.

VII.

Since the Chapter and the notice in the Appendix on this subject were printed, the Bavarian Minister
of Public Worship has issued an important State Paper on the alteration in the relations of the Papacy and the Bavarian Government, consequent on the Vatican Decree of the 18th of July 1870 (f).

CONTENTS.

Part V.

CHAPTER I.

CHAPTER II.
Right of protecting Citizens in Foreign Countries. Pp. 3-7.

CHAPTER III.

CHAPTER IV.

CHAPTER V.
CONTENTS.

CHAPTER VI.

Treaties. Pp. 64-79.

Their Place in the System of International Law. Different Modes of considering them. Who may contract. Reciprocal Consent. What may be the Subject of. Modes of confirming.

CHAPTER VII.


Guarantees, different kinds of.

CHAPTER VIII.

Treaties. Pp. 89-120.

Interpretation of.

(a.) Literal Interpretation.

(b.) Logical Interpretation.

(1.) Uncertainty.

(2.) Impropriety of Language.

General Rules respecting. Uncertainty of Expression, arising from—

(1.) Incompleteness.

(2.) Ambiguity of Language.

(a.) Ambiguity of single Expressions.

(b.) Of general Construction.

Two general Rules relating to. Impropriety of Expression. Rectified by—

(1.) Restrictive.

(2.) Extensive Interpretation.

Case of Russo-Dutch Loan. Eadem ratio idem jus. Things favourable; odious.

CHAPTER IX.


CONTENTS.

Part XI.

CHAPTER I.
Historical Instances. Decisions of Dutch, French, and English Tribunals.

CHAPTER II.
General Arrangement of the Subject. Who may send Embassy. The Trent.

CHAPTER III.
Right to refuse. Resident Embassy.

CHAPTER IV.
General Rights of. Injuries to—Feciales.

CHAPTER V.
Inviolability of. Christian Church. Middle Ages.

CHAPTER VI.

CHAPTER VII.
Whether, and how far, Ambassador amenable to. Cases respecting.
CONTENTS.

CHAPTER VIII.
Pp. 212-238.
How far Ambassador amenable to. Cases respecting. His Suite; Taxes; Duties; his Hotel; Chapel.

CHAPTER IX.
Embassy. Different Classes of Public Ministers.
Pp. 239-247.

CHAPTER X.

CHAPTER XI.

Part XIX.

CHAPTER I.

CHAPTER II.
Consuls-General. Vice-Consuls. Treaties respecting.

CHAPTER III.
United States Consular Regulations.
CONTENTS.

CHAPTER IV.

CHAPTER V.

Part VIII.
International status of foreign spiritual powers, especially of the pope.

CHAPTER I.
Division of the Subject, and Order of Treatment in the following Chapters.

CHAPTER II.
General Observations as to the Right of the State to superintend, within its territorial limits, all religious doctrines taught, and the teachers of them. The early connection of the Christian Church with the state. Pp. 321-337.


CHAPTER III.
Collision between Church and State after the time of Charlemagne. Jura Majestatis circa saecula. Corpus Juris Canonici.
CONTENTS.

CHAPTER IV.


CHAPTER V.


CHAPTER VI.

Subject Continued 1563-1870. Pp. 389-400.


CHAPTER VII.

The International Relations of the Papacy with Foreign States in which the Roman Catholic Church is established during the Period between the Reformation and the Present Time. The History of Concordata. Pp. 401-449.

CONTENTS.

CHAPTER VIII.
The International Relations of the Papacy with Foreign States in which a Protestant Church is established.
Papal Relations with Prussia—with Hanover—with smaller German Protestant States—with Saxony—with Switzerland.

CHAPTER IX.
The International Relations of the Papacy with States in which a Branch of the Catholic Church, not in Communication with Rome, is established. Pp. 464-483.
Papal Relations with Russia—with the Ottoman Porte—with England.

CHAPTER X.
The Electors, Ministers, and Courts of the Pope considered in their Relations to Foreign States. Pp. 484-502.

CHAPTER XI.
International Status of the Patriarchate of Constantinople.
Pp. 503-511.
The Church in the Kingdom of Greece. Relations between the Greek and Anglican Churches.

For Contents of Appendix, see Chapter of Contents preceding Appendix.
EXPLANATION OF REFERENCES TO THE
CORPUS JURIS CIVILIS.

Throughout this Work the Roman Law is cited according to what a priori might seem the natural manner, namely, a reference is made to the Institutes, Digest, the Code, or the Novellas, by an abbreviation of the first syllable of each of these members of the Corpus Juris Civilis, then to the number of the book, then to the number of the title, then to the number of the law, and then to the number of the section or paragraph, as Inst. i. ii. t. i. s. figure 1, meaning book i. title i., and sec. 1 of the Institutes of Justinian; Dig. xxvii. 1, 13, 2, meaning Digest, book xxvii. title i. law 13. sec. 2.; Cod. iii. 39, 5, meaning The Code, book iii. title 39, law 5. The Novellae, or Novellas, are cited according to the number of the Novell, which is subdivided into capita or sections, as Nov. xxi. 2, meaning Novell. xxi. cap. 2.

The Corpus Juris Civilis is usually cited by Continental writers as follows:—The Institutes, by the letters Inst., Institut., or i. The number of the paragraph, followed by the rubric or heading of the title, thus—

§ 3. Inst. De Nuptiis.

Sometimes the reference is made by the numbers of the paragraph, book, or title, thus—

§ 3. Inst. i. 10.

The letters prima., pr., or princip., indicate the commencing paragraph of a title, as the numbering commences with the second.

The Digest, or Pandects, are usually indicated by the older Continental writers by the letters ff.

The letter L. means Law, and the mark § means section of the law. The words after the letters ff. give the rubric or heading of the title or chapter. Thus, for instance, L. 49, § 1, ff. De Act Empt., signifies Law 49, parag. 1, in the Pandects, title De Actione Empti.

Sometimes the first words of the law are cited.

Sometimes the reference is in this manner, the letters Pand. (used instead of ff.), D., or Dig., all of which signify Justinian’s Pandects.
Sometimes the letter or letters indicating the Pandects are placed last, thus—

L. profectitia, § si pater D. De jure Dot.

Or, the numbers of the law and paragraph are given, instead of their initial words, thus—

L. 5, § 6, De Jure Dotium.

The law cited is sometimes indicated by the letters Fr. instead of L.

The Code.

The Code of Justinian is cited in the same way as the Pandects, and indicated by the letters Cod. or C.; and some writers use the letters Constit. (Constitutio) instead of L.

The Novells, or later Constitutions in the Corpus Juris, are indicated by the words Nov. or Novel.
AN EXPLANATION OF THE REFERENCES TO THE BOOKS OF THE CANON LAW.

X. i. 9, 6, 4.—That is to say, book the first, title the ninth, chapter the sixth, and paragraph the fourth of the Decretals of Pope Gregory the Ninth. The letter X. denoting the Decretals of that Pope.

VI. 3, 4, 23.—Book the third, title the fourth, and chapter the twenty-third, of the sixth book of the Decretals by Pope Boniface the Eighth.

Clement.2,5,2.—Book the second, title the fifth, and chapter the second of the Clementines.

Extra. 14, 3.—That is to say, title the fourteenth, and chapter the third, of the Extravagants of Pope Joan the Twenty-second.

Comm. 3, 4.—That is to say, book the third and chapter the fourth of the Communes.

Dist. 76, c. 2.—Distinction the seventy-sixth and chapter the second of the first part of the Decrees. And if a V. consonant, or this note be added, viz. §, it denotes the verse or paragraph of that chapter, as Dist. 16. c. 2, v. 3, or § 3.

16. Q. 7, 3. — That is to say, cause the sixteenth, question the seventh, and chapter the third, of the second part of the Decrees.

Con. 1, 2. — Distinction the first and chapter the second of the third part of the Decrees.

All these books of the Canon Law are likewise sometimes quoted by the initial words of the law or chapter itself, and by the words of the title; as thus, Ex specialis, extra de Judaeis, that is to say, cap. 17. tit. 6. of the fifth book of Gregory's Decretals; for the word Extra imports these Decretals, as well as the Extravagants.
LIST OF CASES
CITED IN THIS VOLUME.

A
Albrecht v. Sussman, 311
Attorney-General, The, v. Kent and others, 233

B
Barbuit's Case in Chancery, 304
Bass (M. de), French Minister, Case of, 202

C
Caroline, The, 165
Charlotte, The, 125
Christiansberg, The, 110
Clarke v. Cretico, 308
Colebrook v. Jones, 310
Columbian Government v. Rothschild, 143
Cross v. Talbot, 222

D
Dalrymple v. Dalrymple, 359
Darling v. Atkins, 222
De Haber v. Queen of Portugal, 136
Diana, The, 125
Dolder v. The Bank of England, 34
Duke of Brunswick v. King of Hanover, 136
Duke de Montellano v. Christin, 145

E
Eliza Ann, The, 125
Elphinstone v. Bedreechund, 125
Emperor of Austria v. Day and Kossuth, 145
Emperor of Brazil v. Robinson and others, 145
England (Ambassador of, at Constantinople), Case of, 202
Evans v. Higgs, 221

F
Falcon, The, 311
Fama, The, 125
Franz et Elise, The, 269

G
Gauntlet, The. See Preface
Gladstone v. Musurus Bey, 216
Gratitudine, The, 110
Gyllenburg (Swedish Ambassador), Case of, 202
XXVIII

CASES CITED.

H

Heathfield v. Chilton, 221, 307
Hoey (M. Van), Case of, 204
Holderness v. English Ambassador at Venice, Case of, 203
Hope and others, The, 311
Hopkins v. De Robeck, 223
Hotham v. East India Company, 125
Hullett and Widder v. King of Spain, 143

I

Indian Chief, The, 311
Inoyosa and Colonna (Spanish Ambassadors), Case of, 201
International, The.  See Preface

J

Josephine, The, 311

K

King, The, in his Office of Admiralty, v. Miller, 51
King, The, v. Benson, 52
King of Spain v. Hullett and Widder, 143

L

Le Louis, The, 70
Lindo v. Rodney, 125
Lockwood v. Coysgarne, 222

M

Magdalena Steam Navigation v. Martin, 216
Maltass v. Maltass, 89 125
Manilla, The, 26
Marryat v. Wilson, 125
Masters v. Manby, 222
Minerva, The, 51
Molly, The, 125

N

Native, The, 58
Nina, The, 269
Novello v. Toogood, 221

O

Oldknow v. Wainwright, 343

P

Pilkington v. Commissioners, &c., 14
— v. Stanhope, 224
President, The, 311
Prioleau, v. United States, 144

Q

Queen, The, in her Office of Admiralty, v. James N. Forbes, 52
Queen, The, v. Ewen, 52

R

Richardson v. Anderson, 124; 125
Ringende Jacob, The, 122, 125
Rothschild v. Queen of Portugal, 144

S

Sa (Don Pantaleon), Case of, 204
Secretary of State for India v. Kamachee Boye Sahaba, 24
Stewart, Dr., Case of, 172
Swift v. Kelly, 389

T

Taylor v. Barclay, 34
223, 224
Telegrafo, The.  See Preface
Teutonia, The, 110
Thompson v. Powles, 34
## CASES CITED.

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trent, The</td>
<td>Case of</td>
<td>21, 160, 162</td>
</tr>
<tr>
<td>Triquet and others</td>
<td>v. Bath</td>
<td>222, 307</td>
</tr>
<tr>
<td>United States</td>
<td>v. McRae</td>
<td>146</td>
</tr>
<tr>
<td>United States</td>
<td>v. Wagner</td>
<td>35, 144</td>
</tr>
<tr>
<td>Viveash</td>
<td>v. Becker</td>
<td>222, 301, 309</td>
</tr>
</tbody>
</table>

### AMERICAN.

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amiable Isabella</td>
<td>The</td>
<td>126</td>
</tr>
<tr>
<td>Anderson v. Lewis</td>
<td></td>
<td>126</td>
</tr>
<tr>
<td>Anne</td>
<td>The</td>
<td>270</td>
</tr>
<tr>
<td>Antelope</td>
<td>The</td>
<td>270</td>
</tr>
<tr>
<td>Arnold</td>
<td>v. United Insurance Company</td>
<td>311</td>
</tr>
<tr>
<td>Bella Coerunes</td>
<td>The</td>
<td>270</td>
</tr>
<tr>
<td>Blight v. Rochester</td>
<td></td>
<td>125</td>
</tr>
<tr>
<td>Bolchos</td>
<td>v. The Three Negro Slaves</td>
<td>126</td>
</tr>
<tr>
<td>British Consul</td>
<td>v. Ship Mermaid</td>
<td>126</td>
</tr>
<tr>
<td>Cabrera</td>
<td>Ex parte</td>
<td>208, 220</td>
</tr>
<tr>
<td>Dupont v. Pichon</td>
<td></td>
<td>229</td>
</tr>
<tr>
<td>Foster v. Neilson</td>
<td></td>
<td>125</td>
</tr>
</tbody>
</table>

### G
- Garcia v. Lee | 126 |
- Gelston v. Hoyt | 27 |
- Gernon v. Cochrane | 270 |
- Gordon v. Kerr | 125 |
- Graham v. Pennsylvania Insurance Company | 126 |
- Griswold v. Washington | 311 |

### H
- Hamiltons v. Eaton | 126 |
- Henderson v. Poindexter | 126 |
- Hutchinson v. Brock | 125 |
- Hylton v. Brown | 126 |

### I
- Inglis v. Trustees of the Sailors' Snug Harbour | 219 |

### J
- Jackson v. Porter | 126 |

### M
- Miller v. Gordon | 126 |
Miller v. The Resolution, 126
McNair v. Ragland, 126

O

Orser v. Hoag, 126

P

Pizarro, The, 126

R

República v. De Longchamps, 208, 220
Robson v. The Huntress, 270
Rose v. Himeley, 27

S

Santíssima Trinidad, The, 126
Society v. New Haven, 125
Society (the) for the Propagation of the Gospel, &c. v. Wheeler, 329
St. I. Indiano, The, 125
Stockton v. Williams, 126

FRENCH.

A

Affaire de la Maison Balguerie, de Bordeaux, contre le Gouvernement Espagnol, 137
Affaire de MM. Temaux, Gandolphe, et Compagnie, contre la République d'Haiti, 137

C

Cellamare, Case of, 206

Hermann, Delong, Case of, 303

S

Soller, M., Case of, 303
Solon, M., against Mehemet Ali, 138
Sully (Duc de), Case of one of the Retinue of, 200,
LIST OF AUTHORITIES

REFERRED TO IN THIS VOLUME,

BEING ADDITIONAL TO THOSE REFERRED TO IN THE FORMER VOLUME.

A

Abbott on Merchant Ships and Seamen. (Eleventh edition.)
Allgemeines Landrecht für die Preussischen Staaten.
Artaud, Histoire de Pie VII.

B

Bacon (Lord), Maxims of the Law, Regula iii.
Bacon's (Matthew) Abridgment.
Baldwin's (American) Reports.
Barbosa, De Officio et Potestate Episcopi.
"  De Jure Ecclesiastico.
Bay's (American) Reports.
Bee's (American) Reports.
Bernard (M.) Notes, on some Questions suggested by the Case of the Trent.
Bingham's Antiquities of the Christian Church.
Bluntschli, Le Droit international codifié.
Bosanquet and Puller's Reports.
Bossuet, Declaratio Cleri Gallicani.
"  Sur l'Unité de l'Église.
Bougeant (Père), L'Histoire du Traité de Westphalie.
Bramhall (Archbishop), A Just Vindication of the Church of England.
Broom's Legal Maxims.

Bullarii Romani Continuatio, S. Pontificum Clementis XIII., Clementis XIV.
LIST OF AUTHORITIES.

Burleigh's (Lord) State Papers, by Murden.
Butler's Historical Memoirs of the Roman Catholics.
Bynkershoeck, Opusculum De Cultu Religionis Peregrinae apud veteres Romanos.

Cesar, De Bello Civili.
Campbell's Reports.
Cases in Equity under Lord Talbot.
Chalmers's Collection of Opinions.
Cicero, De Inventione Rhetorici.
" De Divinatione.
" Epistolae ad Familiare.
" Orationes Philippicæ.
Clark and Finnelly's Reports.
Clergé (M. du).
Colletta, Storia del Reame di Napoli.
Collier's Ecclesiastical History of Great Britain.
Colonial Church Chronicle for February, March, April, 1871.
Coppi, Annali d' Italia.
Cotton's (Sir R.) Remains.
Cujacius, Jacobus.
Cziráky, Conspectus Juris Publici Regni Hungariae.

De Pradt, Quatre Concordats.
" Suite des Quatre Concordats.
" Concordat de l'Amérique avec Rome.
De Torcy, Mémoires.
Deutorisch oder Russisch. (Pamphlet.)
Devereux's (American) Equity Reports.
Devoti, Institutionum Canonicarum Libri.
Dictionnaire de l'Académie Française.
Documenti Diplomatici relativi alla Questione Romana: comunicati dal Ministro degli Affari Esteri. 1870.
Dodd's Roman Catholic History.
Donnellus, De Jure Civili.
Douglas' Reports.
Dow and Clark's Reports.
Dowling's Reports.
Ducange, Gloss.
LIST OF AUTHORITIES.

Duck, De Usu et Auctoritate Juris Civilis.
Dupuis (Jacques), Commentaries on Pithon.
Durnford and East's Reports.

E

Ebenders, Was ist ein Bischof?
Evans's Translation of Pothier on Obligations.
Eybel, Was ist der Papst?

F

Farini, Lo Stato Romano,
Fesbronius (Justinus), De Statu Ecclesiae et legitimâ Potestate Romanâ.
Fleury, Hist. ecclésiastique.
Freeman's Chancery (American) Reports.
Friedrich (Dr. J.), Documenta ad illustrandum Concilium Vaticanum anni 1870.
Fynn's British Consul Abroad.

G

Gaius, Institutiones.
Gallison's (American) Reports.
Giannone, Istoria del Regno di Napoli.
Gibbon, Decline and Fall of the Roman Empire.
Gioberti, Della Riforma Cattolica. Frammenti.
Giesler, Lehrbuch der Kirchengeschichte.
Gregorii Magni Opera.
Grotius, De Imperio summârum Potestatum circa sacra.

H

Hegel, Naturrecht und Staatswissenschaft.
Hilliger ad Donellum.
Hill's (American) Reports.
Hoffman, Lexicon Universale.
Hue, Voyage dans le Thibet.

J

Junius, Letters of.

K

Koch, Sanctio Pragmatica Germanorum Illustrata.
VOL. II.
LIST OF AUTHORITIES.

I,

La Puente, Historia General de España.
Lamberty, Mémoires.
Landon’s Manual of Councils.
Laurent, Hist. du Droit des Gens.
Law Journal Reports.
Law Reports.
Leber, Pièces relatives à l’Histoire de France.
Lequeux, Manuale Compendium Juris Canonici.
Livius.
Lorieux, Traité de la Prerogative royale.

M

Maillane (Durand de), Dictionnaire de Droit canonique.
Maistre (Comte Joseph de), Du Pape.
Marca (Petrus de), De Concordantia Sacerdotii et Imperii de Libertatibus Ecclesiae Gallicane.
Marquardsen (Dr.), Der Trent Fall.
Martin’s (American) Reports.
Martin (H.), Histoire de France.
Mason, Vindiciae Ecclesiae Anglicane,
Massachusetts (American) Reports.
Maule and Selwyn’s Reports.
Miles’ (American) Reports.
Milman, History of Latin Christianity.
Modern Reports.
Moser, De Pactis et Privilegiis circa Religionem.
Müller’s Fürstenbund.
,, Reichstagstheatrum unter Friedrich III.
Muratori, Annali.

N

Noodt (Ger), Dissertatio de Relig. ab Imperio, Jure Gentium libera.

O


P

Pacca (Cardinale), Memorie del.
Packman, Lehrbuch des Kirchenrechts.
LIST OF AUTHORITIES.

Paine's (American) Reports.
Pamiers (De), Traité de la Régale.
Pando, Elementos del Derecho Internacional.
Peray (M. Michel de), Observations sur le Concordat fait entre Léon X et François Premier.
Peters' (American) Reports.
Phillimore's Case of the Seizure of the Southern Envoys.
   " (Burn's) Ecclesiastical Law.
Phillips, Kirchenrecht.
Pichler (Dr. A.), Geschichte der kirchlichen Trennung zwischen dem Orient und Occident.
Planck, Geschichte der Christlich-kirchlichen Gesellschaftsverfassung.
Popoff, Hist. of Council of Florence, translated by Neale.
Portalis (J. E.), Discours, Rapports, et Travaux inédits sur le Concordat de 1801, les Articles organiques, &c.
Prendergast, The Law relating to Officers of the Navy.
Pütter, Beiträge zur Völkerrechts-Geschichte.

Q
Quintilianus, De Institutione Oratorio.

R
Ranke, Die Römischen Päpste.
Real (De), Science du Gouvernement.
Rechberger, Enchiridion Juris Ecclesiastici Austriaci.
Riegger (Pauli Jos. de), Institutiones Jurisprudentiae Ecclesiasticae.
Robertson's Ecclesiastical Reports.
Rousset, Supplement.  See Dumont, in Vol. I.
Raynaldus.  See Baronius.

S
Samwer (Continuation of Martens).
Savigny, Obligationenrecht.
Schoell, Archives historiques et politiques.
Schram, Institutiones Juris Ecclesiastici Publici et Privati.
Schröckh, Christliche Kirchengeschichte.
Scottish Ecclesiastical Journal, April 1851.
Simons's Reports.
Spittler, Geschichte des Papstthums.
Strype's Annals of the Church.
St.-Simon, Mémoires de.
LIST OF AUTHORITIES.

T
Taparelli, Saggio Teoretico di Dritto Naturale, &c.
Taunton's Reports.
Taylor's (American) Reports.
Taylor's Law of Evidence.
Tétot, Répertoire des Traités de Paix de 1492–1866:
   1. Partie alphabétique.
   2. Partie chronologique. References to the different collection of Treaties,
      Titles and Dates of which are given.
Theodosius, Codex.
Thomassinus, Vetus et Nova Ecclesiæ Disciplina.
Thuanus, Historia sui Temporis.
Thurloe's State Papers.
Tindal (Continuation of Rapin).
Twiss, Letters Apostolic.

V
Van Espen, Tractatus de Promulgatione Legum Ecclesiasticorum ac specialit Bullarum et Rescriptorum Curiae Romanae.
" Jus Ecclesiasticum universum hodiernæ disciplinae.
Vernon's Cases.
Vesey's Reports.
Virgilius.

W
Walker's (American) Chancery Reports.
Walters's Kirchenrecht.
Washington's C. C. (American) Reports.
Wildman's International Law.
Willson's Reports.

Y
Yerger's (American) Reports.

Z
Zouch, Solutio Qüestionis Veteris et Novæ, sive de Legati Delinquentis Judice Competente Dissertatio.
# LIST OF REPORTS.

## ENGLISH.

<table>
<thead>
<tr>
<th>B</th>
<th>Law Journal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>Law Reports (Weekly Notes).</td>
</tr>
<tr>
<td>C</td>
<td>Maule and Selwyn's.</td>
</tr>
<tr>
<td>C</td>
<td>Modern.</td>
</tr>
<tr>
<td>C</td>
<td>Moore's Privy Council.</td>
</tr>
<tr>
<td>D</td>
<td>Robinson's (Christopher) Admiralty.</td>
</tr>
<tr>
<td>D</td>
<td>Robertson's Ecclesiastical.</td>
</tr>
<tr>
<td>E</td>
<td>Simons'.</td>
</tr>
<tr>
<td>E</td>
<td>Strange's.</td>
</tr>
<tr>
<td>H</td>
<td>Taunton's Reports.</td>
</tr>
<tr>
<td>K</td>
<td>Vernon's Cases.</td>
</tr>
<tr>
<td>K</td>
<td>Vesey's.</td>
</tr>
<tr>
<td>K</td>
<td>Vesey and Beames' (Chancery).</td>
</tr>
<tr>
<td>Y</td>
<td>Willson's.</td>
</tr>
<tr>
<td>Y</td>
<td>Young and Collier's.</td>
</tr>
</tbody>
</table>
### LIST OF REPORTS.

#### AMERICAN.

<table>
<thead>
<tr>
<th>Letter</th>
<th>Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>Baldwin's.</td>
</tr>
<tr>
<td></td>
<td>Bay's.</td>
</tr>
<tr>
<td></td>
<td>Bee's.</td>
</tr>
<tr>
<td>C</td>
<td>Cranch's.</td>
</tr>
<tr>
<td>D</td>
<td>Dallas'.</td>
</tr>
<tr>
<td></td>
<td>Devereux's Equity.</td>
</tr>
<tr>
<td>F</td>
<td>Freeman's Chancery.</td>
</tr>
<tr>
<td>G</td>
<td>Gallison's.</td>
</tr>
<tr>
<td>H</td>
<td>Hill's</td>
</tr>
<tr>
<td>J</td>
<td>Johnson's.</td>
</tr>
<tr>
<td>M</td>
<td>Martin's.</td>
</tr>
<tr>
<td></td>
<td>Massachusetts.</td>
</tr>
<tr>
<td></td>
<td>Miles'.</td>
</tr>
<tr>
<td>P</td>
<td>Peters'.</td>
</tr>
<tr>
<td></td>
<td>Paine's.</td>
</tr>
<tr>
<td>T</td>
<td>Taylor's.</td>
</tr>
<tr>
<td>W</td>
<td>Walker's Chancery.</td>
</tr>
<tr>
<td></td>
<td>Washington's C. C.</td>
</tr>
<tr>
<td></td>
<td>Wheaton's.</td>
</tr>
<tr>
<td>Y</td>
<td>Yerger's.</td>
</tr>
</tbody>
</table>

#### FRENCH.

Gazette des Tribunaux.
COMMENTARIES

UPON

INTERNATIONAL LAW.
COMMENTARIES
UPON
INTERNATIONAL LAW.

PART THE FIFTH.

CHAPTER I.

RIGHTS INCIDENT TO THE EQUALITY OF STATES.

I. It has been said (a) that the Rights incident to Equality seem to flow, more especially, from the second of the two propositions upon which the science of International Law is mainly built; namely, the proposition that each State is a member of an Universal Community; and that the principal Rights incident to this doctrine of the Equality of States, are the following:—

1. The Right of a State to afford protection to her subjects wheresoever commorant (b): and under this category must be considered the important question of Debts due by the Government of one State to the Subjects of another.

(a) Vide ante, vol. i. part i. c. 2. p. 9; part iii. c. 2. p. 184.
(b) Gratius, l. iii. c. ii. Quomodo jure gentium bona subditorum pro debito imperantium obligentur: ubi de repressaliis.
Vattel, l. ii. c. xiv. sec. 216.
Heffters, 134.
Martens, l. iii. c. 3. sec. 110.
II. The Right of a State to the Recognition of her Government by the Government of other States.

III. The Right of each State to external Marks of Honour and Respect from other States.

IV. The Right of each State to enter into International Covenants and Treaties with other States.

It is proposed to consider these subjects in the following Chapters. But with regard to all of them it should be borne in mind that—to use well-considered judicial language—the Transactions of Independent Sovereign States between each other are governed by other laws than those which Municipal Courts administer. Such Courts have neither the means of decreeing what is right, nor the power of enforcing any decision which they may make (c).

(c) Secretary of State for India v. Kamachee Boye Sahaba. 13 Moore, Privy Council Rep., pp. 75, 84-86.
CHAPTER II.

RIGHT OF PROTECTING CITIZENS IN FOREIGN COUNTRIES.

II. The limitation which this Right of Protection prescribes to the foregoing Right of Jurisdiction, may be in a great measure inferred from what has been stated with respect to the extent of the latter Right.

"Prima autem maximèque necessaria cura pro subditis, " sive qui familiari, sive qui civili subsunt imperio; sunt enim " quasi pars rectoris;" is the language of Grotius (a); and Vattel (b), following in the same track, observes:— "Quiconque maltraite un citoyen, offense indirectement (c) " l'État qui doit protéger ce citoyen" (d).

It has been said that every individual who enters a foreign territory, binds himself, by a tacit contract, to obey the laws enacted in it for the maintenance of the good order and tranquillity of the realm. The converse of the proposition is equally true.

Foreigners, whom a State has once admitted unconditionally into its territories, are entitled not only to freedom from injury (e), but to the execution of justice (f) in respect

(a) Grotius, l. ii. c. xxv. De causis belli pro aliis suscipiendi.
(b) Hefters, ss. 6, 59, 60.
Vattel, l. ii. vi. De la part que la nation peut avoir aux actions de ses citoyens.
(c) Vide ante, vol. i. p. 355.
(d) Grotius, ubi supra.
Vattel, ubi supra.
(e) Correspondence respecting the Arrest of Mr. Harwood (the Vienna Correspondent of "The Morning Chronicle") by the Austrian Authorities at Vienna, 1852-3. Laid before Parliament, 1853.
to their transactions with the subjects of that State. No country has a right to set, as it were, a snare for foreigners; therefore conditions hostile to their interests, or different from general usage, must be specified beforehand (g). Foreigners are not, as will be seen hereafter, strictly speaking, entitled to demand as a right the execution of justice in civil matters relating to affairs either between themselves, or between themselves and the citizens of a third State. How far the Comity of nations extends to these last two cases will be considered hereafter (h). It is only necessary to remark here, that the refusal on the part of a State to do justice between commorant foreigners, with respect to disputes which have arisen from transactions in that State, is, to say the least of it, a very gross violation of that Comity (i).

III. The State, to which the foreigner belongs, may interfere for his protection when he has received positive maltreatment, or when he has been denied ordinary justice in the foreign country. The State of the foreigner may insist upon reparation immediately in the former case. In the latter the interference is of a more delicate character. The State must be satisfied that its citizen has exhausted the means of legal redress afforded by the tribunals of the country in which he has been injured. If those tribunals are unable or unwilling to entertain and adjudicate upon his grievance, the ground for interference is fairly laid. But it behoves the interfering State to take the utmost care, first, that the commission of the wrong be clearly established; secondly, that the denial of the local tribunals to decide the question at issue be no less clearly established.

It is only after these propositions have been irrefragably

---

(g) "Dès qu'il les reçoit, il s'engage à les protéger comme ses propres sujets, à les faire jouir, autant qu'il dépend de lui, d'une entière sûreté."
— *Vattel*, 1. ii. c. viii. s. 104.

(h) *Vattel*, 1. ii. c. viii. *Règles à l'égard des étrangers.*

(i) *Vattel*, 1. ii. c. viii. sec. 103. "Les différend qui peuvent s'élever entre les étrangers, ou entre un étranger et un citoyen, doivent être terminés par le juge du lieu, et suivant les lois du lieu."
proved, that the State of a foreigner can demand reparation at the hands of the Government of his country; and it is not till after the Executive as well as the Judicial Authorities have refused redress, that recourse can be had to Reprisals (k), much less to War.

As a general rule, no objection to the forms of procedure, or the mode of administering justice in the Courts of the country, can found any such demand; the foreigner should have considered these things before he entered into transactions in the country (l). Nevertheless, a plain violation of the substance of natural justice, e.g. refusing to hear the party or to allow him to call witnesses, would amount to the same thing as an absolute denial of justice.

"Jus repressalium (says Grotius) fieri intelligitur non tantum si in suntem aut debitorem judicium intra tempus idoneum obtineri nequeat, verum etiam si in re minimè dubia (nam in dubia re præsumptio est pro his qui ad judicia publicè electi sunt) planè contra jus judicatum sit; nam auctoritas judicantis non idem in exteiros quod in subditos valet... exteri autem jus habent cogendi, sed quo uti non liceat quamdiù per judicium suum possint obtinere" (m).

It is impossible to state the law more ably or more clearly than in the reply of Great Britain, in 1753, to the King of Prussia (n). According to that statement, "The law of nations, founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage, does not allow of reprisals, except in cases of violent injuries directed or supported by the State; and justice absolutely denied in re minimè dubia by all the tribunals, and afterwards by the Prince" (o).

(k) Vide post.
(l) See the case of Mr. Worth—Papers laid before Parliament 1871.
(m) Grotius, l. iii. c. ii. s. 5.
(n) 2 Martens Causes célèbres, part i. P. 57 of Memorial.—Cabinet Library of Scarce and Celebrated Tracts, vol. i.
(o) Treaty between England and Holland, July 31, 1667. Reprisals not
IV. The distinction between domiciled persons and visitors in or passengers through a foreign country is never to be lost sight of; because it must affect the application of the rule of law which empowers a nation to enforce the claims of its subjects in a foreign State. The foreign domicile does not indeed necessarily take away this rule of law, but it renders the invocation of it less reasonable, and the execution of it more difficult.

A subject, who has deliberately domiciled himself in another State, can have no ground of complaint, if he be subjected to many taxes and impositions from which the simple stranger would, by the usage of nations, be exempt. Moreover he must be taken to have considered the habits of the people, the laws of the country, and their mode of administration, before he established therein his household gods, and made it the principal seat of his fortunes. He cannot therefore expect, that every complaint which, with respect to these matters, he may be disposed to urge upon his native Government, will of necessity be entertained by it. More especially, if, being permitted by the law of his domicil, he have purchased land, and thus incorporated himself, as it were, into the territory of a foreign country, he cannot require his native Government to interfere on the subject of the operation of municipal laws, or the judgment of municipal tribunals upon his rights of immovable property in this foreign land.

The case must be one of flagrant violation of justice, which would lay the foundation of an International remonstrance in such a matter; unless, indeed, the provisions of some particular treaty (p), or some public proclamation of the foreign Government, take the case out of the application of the general law.

Grotius takes this distinction very strongly between the

to be granted till Justice has been demanded according to the ordinary course of law.

(p) See next Chapter.
actually domiciled and the merely commorant foreigner, in his discussion on the important question upon which we are now about to enter, viz., as to the liability of the nation at large for the obligations incurred by their Government.—"Jure "gentium subjacent pignorationi omnes subditi injuriam "facientis, qui tales sunt ex causa permanente, sive indigene, "sive advente: non qui transeundi aut morae exiguae causa "alicubi sunt" (q).

Recent times have furnished some striking examples of armed intervention of States on behalf of injured subjects.

The convention in 1861 between England, France, and Spain, led to the combined expedition to Mexico, in order to enforce the payment of debts due from that State to their subjects, and for the general redress of injuries to them (r).

The war of 1868, waged by England against Abyssinia, for the imprisonment and detention of British subjects—a war very remarkable for the skill and vigour with which it was conducted, and the complete success which crowned it (s).

The exigencies of war may sometimes compel a belligerent to make immediate use of the property of subjects of neutral States commorant in his territory: in such cases, he must prove the overwhelming necessity which led to the act, and make, as soon as practicable, full compensation to the injured person. The conduct pursued by the Prussian Government with respect to the seizure of British vessels in the Seine by the Prussian army during the recent war with France, most fully recognised, and most amply has discharged, these international obligations (t).

(q) Grotius, i. iii. c. ii. sec. vii.
(s) Ib. 1868.
(t) See Correspondence (laid before Parliament 1871), respecting the sinking of six British vessels in the Seine by Prussian troops.
CHAPTER III.

RIGHT OF PROTECTING CITIZENS IN FOREIGN COUNTRIES.—DEBTS OF THE STATE.

V. The right of interference on the part of a State, for the purpose of enforcing the performance of justice to its citizens from a foreign State, stands upon an unquestionable foundation, when the foreign State has become itself the debtor of these citizens.

It must, of course, be assumed that such State has, through the medium of its proper and legitimate organs, contracted such debt; whether that organ be the Sovereign alone, according to the constitution of Russia, or the Sovereign and Parliament, according to the constitution of England, the debt so contracted with foreign citizens, whether in an individual or a corporate capacity, constitutes an obligation, of which the country of the lenders has a right to require and enforce the fulfilment. Whether it will exercise that right or not is a matter for the consideration of its private domestic policy: "Les emprunts," Vattel says, with great precision (a), "faits pour le service de l'Etat, les dettes "créées dans l'administration des affaires publiques, sont des "contrats de droit étroit, obligatoires pour l'Etat et la nation "entière. Rien ne peut la dispenser d'acquitter ces dettes- "là. Dès qu'elles ont été contractées par une puissance "légitime, le droit du créancier est inébranlable."

(a) Vattel, 1. ii. c. xiv. s. 216.

Cod. l. xi. t. 29. de juro Reipublicae. "An respublica, in cujus locum "successistis, ideo,quia satisfacisset debito vos proponitis, jus pignoris in "eo fundo habeat, apud suum judicem quæritur. Si enim neque beneficiio "sibi concedo id jus nacta est, neque specialiter in obligatione pignoris "sibi prosperiit, causa ejus non separaturn a ceteris creditoribus, qui habent "personalem actionem."
And he adds, anticipating a revolutionary argument of later times: "Que l'argent emprunté ait tourné au profit de " l'Etat, ou qu'il ait été dissipé en folles dépenses, ce n'est pas " l'affaire de celui qui prête. Il a confié son bien à la nation; " elle doit le lui rendre. Tant pis pour elle, si elle a remis " le soin de ses affaires en mauvaises mains."

It seems to have been in accordance with this important rule of International Law, that the following circular was addressed, in 1848, by Viscount Palmerston, the Secretary of State for Foreign Affairs, to the British representatives in foreign States:—

"Foreign Office, January, 1848."

"Her Majesty's Government have frequently had occasion " to instruct her Majesty's representatives in various foreign " States to make earnest and friendly, but not authoritative " representations, in support of the unsatisfied claims of British " subjects who are holders of public bonds and money se- "curities of those States.

"As some misconception appears to exist in some of those " States with regard to the just right of Her Majesty's Go- " vernment to interfere authoritatively, if it should think fit " to do so, in support of those claims, I have to inform you, " as the representative of Her Majesty in one of the States " against which British subjects have such claims, that it is " for the British Government entirely a question of discretion, " and by no means a question of International Right, whether " they should or should not make this matter the subject of " diplomatic negotiation. If the question is to be considered " simply in its bearing upon International Right, there can " be no doubt whatever of the perfect right which the Go- " vernment of every country possesses to take up, as a matter " of diplomatic negotiation, any well-founded complaint which " any of its subjects may prefer against the Government of " another country, or any wrong which from such foreign " Government those subjects may have sustained; and if the " Government of one country is entitled to demand redress
"for any one individual among its subjects who may have "a just but unsatisfied pecuniary claim upon the Government "of another country, the right so to require redress cannot "be diminished merely because the extent of the wrong is "increased, and because instead of there being one individual "claiming a comparatively small sum, there are a great "number of individuals to whom a very large amount is due. "It is therefore simply a question of discretion with the "British Government whether this matter should or should "not be taken up by diplomatic negotiation, and the decision "of that question of discretion turns entirely upon British "and domestic considerations.

"It has hitherto been thought by the successive Govern- "ments of Great Britain undesirable that British subjects "should invest their capital in loans to foreign Governments "instead of employing it in profitable undertakings at home; "and with a view to discourage hazardous loans to foreign "Governments, who may be either unable or unwilling to "pay the stipulated interest thereupon, the British Govern- "ment has hitherto thought it the best policy to abstain from "taking up as International Questions the complaints made "by British subjects against foreign Governments which have "failed to make good their engagements in regard to such "pecuniary transactions.

"For the British Government has considered that the losses "of imprudent men, who have placed mistaken confidence in "the good faith of foreign Governments, would prove a "salutary warning to others, and would prevent any other "foreign loans from being raised in Great Britain, except "by Governments of known good faith and of ascertained "solvency. But nevertheless, it might happen that the loss "occasioned to British subjects by the non-payment of in-
"terest upon loans made by them to foreign Governments "might become so great that it would be too high a price for "the nation to pay for such a warning as to the future, and "in such a state of things it might become the duty of the "British Government to make these matters the subject of "diplomatic negotiation."
"In any conversation which you may hereafter hold with "the —— Ministers upon this subject, you will not fail "to communicate to them the views which Her Majesty's "Government entertain thereupon, as set forth in this "despatch. "I am, &c., "PALMERSTON."

In June, 1847, Lord George Bentinck brought forward a motion in the House of Commons, "That an Address be pre-"sented to Her Majesty, humbly praying that Her Majesty "may be graciously pleased to take such steps as may be "deemed advisable to secure for the British holders of unpaid "foreign bonds redress from the respective Governments."

In replying to Lord G. Bentinck, Lord Palmerston said:"Although I entreat the House, upon grounds of public "policy, not to impose at present upon Her Majesty's "Government the obligation which the proposed Address "would throw upon them, yet I would take this opportunity "of warning foreign Governments who are debtors to British "subjects, that the time may come when this House will no "longer sit patient under the wrongs and injustice inflicted "upon the subjects of this country. I would warn them that "the time may come when the British nation will not see "with tranquillity the sum of 150,000,000L. due to British "subjects and the interest not paid; and I would warn them "that, if they do not make proper efforts adequately to fulfil "their engagements, the Government of this country, what-"ever men may be in office, may be compelled by the force "of public opinion and by the votes of Parliament to depart "from that which has hitherto been the established practice "of England, and to insist upon the payment of debts due to "British subjects. That we have the means of enforcing "the rights of British subjects I am not prepared to dispute. "It is not because we are afraid of those States, or all of "them put together, that we have refrained from taking the "steps to which my noble friend (Lord G. Bentinck) would "urge us. England, I trust, will always have the means "of obtaining justice for its subjects from any country upon "the face of the earth. But this is a question of expediency,"and not a question of power; therefore, let no foreign
"country who has done wrong to British subjects deceive "itself by a false impression, either that the British nation "or the British Parliament will for ever remain patient "acquiescents in the wrong, or that, if called upon to enforce "the rights of the people of England, the Government of "England will not have ample means at its command to "obtain justice for them" (c).

VI. The obligation of the State debtor is, if possible, yet stronger when the debt has been guaranteed by Treaty (d). For in that case, the foreign may be entitled to a preference over the domestic creditor.

As a general rule, the proposition of Martens seems correct, that the foreigner can only claim to be put on the same footing as the native creditor of the State.

VII. It may indeed happen, as the same author most justly observes, that the debtor State may adopt measures of domestic finance, so fraudulent and iniquitous, so evidently repugnant to the first principles of justice, with so manifest an intention of defeating the claims of its creditors, as to authorise the Government of the creditor in having recourse to acts of retaliation, reprisals, or open war,—such measures, for instance, as the permanent depreciation of coin or paper money, or the absolute repudiation of debts contracted on the public faith of the country.

The epithet permanent is used, because it could scarcely be denied that, in a case of extraordinary necessity (e), a nation might adopt temporary measures of finance with regard to its paper money, of which the foreign creditor could not justly complain.

But then he has a right to the observance of two conditions:—1. That the real value of the loan be eventually paid. 2. That he be placed during the interim on the same footing as the domestic creditor.

(c) Hansard Parl. Deb. 1847.
(d) E. g. as in the case of Greece. See Convention of 30th April, 1833, art. xii. De M. et De C. t. iv. p. 340.
(e) See also case mentioned by Vattel, l. ii. c. xii. s. 170.
VIII. The French Government, during the last war between England and France, confiscated a debt due from a French to a British subject: subsequently, an indemnity was stipulated for on the part of the English Government. When the matter was brought before the Commissioners appointed to adjust claims of this description, a question of great importance arose, namely, whether the debt was to be calculated according to the value of the currency at the time when the confiscation took place; or, there having been subsequently to the time of this confiscation a great depreciation in the French currency, whether the value should be calculated in the depreciated currency. The Commissioners held that the debt ought to be calculated according to the value at the time of the confiscation. The Privy Council, on appeal, confirmed their decree (f). Sir William Grant, one of the greatest judges ever known in England, in delivering his judgment, observed, that this case bore no analogy to the case between a debtor and creditor, whatever might be the law (g) in a case, where a depreciation of currency happened between the time when the debt was contracted, and when it was paid; for he said: "There is a wrong act " done by the French Government: then they are to undo " that wrong act, and to put the party in the same situation " as if they had never done it. . . . It is not merely " the case of a debtor paying a debt at the day it falls due; " but it is the case of a wrongdoer who must undo, and " completely undo the wrongful act he has done; and if he " received the assignats at the value of 50d., he does not " make compensation by returning an assignat which is only " worth 20d.: —he must make up the difference between " the value of the assignat at different periods" (h).

In fact, the creditor is entitled to a restitutio in integrum.

(f) See the authorities on this subject collected. Story on Conflict of Laws, ss. 308–313; et vide post, Comity.
(g) Vide ante, vol. i, part i, chap. viii.
(h) Pilkington v. Commissioners, &c., 2 Knapp's Privy Council Reports, pp. 17–21.
In States where a general income-tax has been imposed, the tax being levied on, amongst other things, income arising out of dividends in the public funds, a nice question arises whether this income-tax should be levied on dividends payable to foreigners resident out of the State; that is, whether a State may impose a tax on the interest of her own debt due to a foreign creditor. The practice in England itself has been not to impose this tax, but the English Government in India imposes a tax upon the interest payable on its debt to its creditors of all nations. Indeed the English holder of Indian Stock pays a double duty, first to the Indian and then to the English Government. In his recent speech on the Budget, of April 21 last, the present Chancellor of the Exchequer is reported to have said, that dividends belonging to foreigners residing abroad, to the amount of £70,000 annually, were not taxed, and to have added, "I say boldly that I know of no proper exemption "from taxes except in those cases where the taxes are not "worth collecting." (a).

The several states of the United States of America deduct an income-tax of the State from the interest on the State debt in all cases; but the Government of the United States levies no income-tax on the Federal debt, having, in fact, covenanted not to do so, when it raised its recent loans.

The Austrian and Italian Governments levy heavy income-taxes on the interest of their funded debts, and make no exception in the case of foreign creditors.

It may be quite right that a person having an income accruing from money lent to a foreign State should be taxed by his own country on his income derived from this source; and if his own country impose an income-tax, it is, of course, a convenience to all parties that the government, which is to receive the tax, should deduct it from the debt which in this instance that government owes to the payer of the tax, and thus avoid a double process; but a foreigner, not resident in the State, is not liable to be taxed by the

\[(k)\] *The Times*, April 21, 1871.
State; and it seems unjust to a foreign creditor to make use of the machinery, which, on the ground of convenience, is applied in the cases of domestic creditors, in order to subject him to a tax to which he is not on principle liable.

IX. It is a clear maxim of International Law that the property of the subject is liable for the debts contracted by the State of which he is a member. This proposition is discussed with learning and excellent sense by Grotius. After saying that—“Mero naturae jure ex facto alieno nemo ‘tenetur nisi qui bonorum successor est;’” and citing some remarkable passages from Seneca, “Si quis patriæ meæ ‘pecuniam credat, non dicam me illius debitorem, nec hoc æs ‘alienum profitebor; ad exsolvendum tamen hoc portionem ‘meam dabo; unus e populo non tanquam pro me solvam, ‘sed tanquam pro patria conferam. Singuli deebunt non ‘tanquam proprium, sed tanquam publici partem” (i); and after observing that by the Roman Law the debts of the “universitas,” or corporate body, were, on failure of the funds of the universitas, binding upon individuals, “non ‘(qua) singuli, sed qua pars sunt universorum;” and that the whole tenor of the later provisions of that law were adverse to the principle of hypothecating one man’s property for another’s debts, even for public debts; he adds in admirable language:—“Hæc quanquam vera sunt, tamen ‘jure gentium voluntario induci potuit, et inductum appareat, ‘ut pro eo quod debet prestare civilis aliqua societas, aut ‘ejus caput, sive per se primo, sive quod alieno debito jus ‘non reddendo se quoque obstrinxerit, pro eo teneantur et ‘obligata sint bona omnia corporalia et incorporalia eorum ‘qui tali societati aut capiti subsunt. Expressit autem ‘hoc quædam necessitas, quod alioqui magna daretur in- ‘juriis faciendis licentia, cum bona imperantum sæpe non ‘tam facile possint in manus venire, quam privatorum qui ‘plures sunt. Est igitur hoc inter jura illa quæ Justinianus ‘ait, usu exigente et humanis necessitatibus, a gentibus ‘humanis constituta.”

(i) De J. B. et P. l. iii. c. ii. ss. 1, 2.
CHAPTER IV.
RECOGNITION.

Out of what elements the constitution of a State shall be composed, under what form of Government it shall exist, are questions of Public Law \( (a) \), with which, so long as the constitution and Government do not threaten the liberties of other States \( (b) \), International Law has no concern. But when a new State springs into being, and demands to be admitted into the great commonwealth of States, International Law requires that her political status be so far considered by other States, as to satisfy them that she is capable of discharging international obligations. The Recognition of the new by the old States signifies their conviction that she possesses such capacity. This subject of Recognition is closely connected with that of Intervention discussed at the end of the last volume, and is a kind of moral intervention by one State in the affairs of another \( (c) \).

\( (a) \) Vol. i.
\( (b) \) Ibid.
\( (c) \) Martens, t. i. l. 3. c. 2. s. 82. n. 6. *De la Reconnaissance politique.*
Klüber, s. 23.
Oppenheim, p. 202. kap. 8. s. 9, in part very good and clear.
Saalfeld, s. 30. pp. 63, 64.
Wheaton, *Elem.* 33, 37, 42.
Heffter, ss. 23, 29, 92.
Martens, *Nouvelles Causes célèbres,* tom. i. p. 370. *Cause quatrième:*—
"Différends survenus en 1778, entre la Grande-Bretagne et la France, au sujet de la reconnaissance de l'indépendance des Colonies anglo-américaines."

*Vattel*, l. iv. c. v. s. 68.
*Bluntschli.* *Le Droit international codifié* (1870), l. xi. 2. *Formation et Reconnaissance des États.*
Such is the usual meaning of this term of International Jurisprudence; but it may also signify the act of acknowledgment by the State itself, from which the Province claiming its independence has revolted, of the independence of that Province.

Such, for example, were the formal Recognitions by the German Empire, in 1648 and 1654, of the Independence of Switzerland; of Holland by Spain; of Holland in 1649, and of Portugal in 1668; by Great Britain of the United States of America in 1782; by France when, in the Treaty of Paris in 1815, she recognised the independence of the kingdoms which had been seized upon and retained by her since 1790.

This Recognition is, of course, infinitely more material to the recognised State, than any act of the kind by a third Power can be. But it is the latter species of Recognition that claims discussion in this place.

XI. In modern times, at least, the occasions for the application of this part of International Law can only arise

1. When a nation acquires by conquest a new territory, which she claims to have recognised as an integral part of her kingdom.

2. When a portion of a nation separates itself from the remainder, and claims admission as an independent community, into the society of States. The principle affecting such a claim is the same, whether this portion occupy a territory on the same Continent with, and contiguous to the country from which it has revolted, or a distant colony of that country; whether it be the case of Holland in the reign of Philip II., of Belgium in our own times, of the North American Colonies in the reign of George III., or of the South American Colonies in that of Ferdinand VII. (d).

(d) "It is perfectly true, as has been mentioned, that the term 'recognition' has been much abused; and, unfortunately, that abuse has, perhaps, been supported by some authority: it has clearly two senses, in which it is to be differently understood. If the colonies say to the mother country, 'We assert our independence,' and the mother country answers, 'I admit it,' that is recognition in one sense. If the colonies
3. There is also the case of the Governor of an Independent State assuming a new title, of which he claims the recognition by other States.

XII. 1. The first instance belongs more properly to a later part of these commentaries, which relates to the Rights of Belligerents, the Duties of Neutrals, and the Effects of War.

2. As to the second instance, the Recognition of a revolted Province or Colony by a State, other than that from which it has revolted, is of two kinds, Virtual and Formal.

The mere observance by a Third Power of a strict neutrality in the war between an old and a new State, especially when called upon by the former for intervention and aid, has some beneficial effect with respect to the nation which is struggling for independence. It allows impartially to both an equal rank and character as belligerents. The question of the right of Third Powers to assist either party has been already considered (e).

say to another State, 'We are independent,' and that other State replies, 'I allow that you are so,' that is recognition in another sense of the term. That other State simply acknowledges the fact, or rather its opinion of the fact; but she confers nothing, unless, under particular circumstances, she may be considered as conferring a favour. Therefore it is one question, whether the recognition of the independence of the colonies shall take place, Spain being a party to such recognition; and another question, whether Spain, withholding what no power on earth can necessarily extort, by fire, sword, or conquest, if she maintain silence without a positive refusal, other countries should acknowledge that independence. I am sure that my honourable and learned friend will agree with me in thinking, that his exposition of the different senses of the word 'recognition' is the clearest argument in favour of the course we originally took, namely, that of wishing that the recognition in the minor sense should carry with it recognition by the mother country in the major sense. The recognition by a neutral power alone cannot, in the very nature of things, carry with it the same degree of authority as if it were accompanied by the recognition by the mother country also."—Speeches of Mr. Canning, vol. v. pp. 299, 300.

(e) Vide ante, vol. i. p. 463.

XIII. If the contest be protracted, and there be any appearance of equality between the contending forces, the subsequent conduct of Third Powers, intending to remain neutral, cannot be blamed, if they proceed to a virtual Recognition of the revolted State; that is to say, if they recognise its commercial flag, and if they sanction the appointment of Consuls to the ports of the new State. So far, there is a Recognition of its de facto existence, fully justified, perhaps indeed imperatively enjoined, by the duties of the Third Power towards its own subjects, and in no way inconsistent, according to the practice of nations, with the continued observance of neutrality between the contending parties (f).

It was not, however, till after the struggle between Spain and her South American colonies had lasted for many, about twelve, years, that Great Britain accorded this virtual Recognition to the latter—righteously, perhaps even too scrupulously, observing the rule, of not injuring, even indirectly, the interests of a country with which she was on terms of amity.

XIV. There is no proposition of law upon which there exists a more universal agreement of all jurists than upon this, viz., that this virtual and de facto Recognition of a new State gives no just cause of offence to the old State (g), inasmuch as it decides nothing concerning the asserted rights of the latter. For, if they be eventually sustained and made triumphant, they cannot be questioned by the Third Power, which, pending the conflict, has virtually recognised the revolted State.

Nevertheless, the kind of Recognition which has provoked most discussion among States, especially during very recent times, has been that which accords to both parties in a civil

Canning's Speeches, vol. v. p. 293.

(g) President Munro's Message, 2nd Dec. 1828; and see Speeches of Canning and Mackintosh, referred to above.
war the status of a belligerent, with the rights and the obligations incident to that status. Such a Recognition, it is to be observed, releases the Government de jure from any obligation as to the conduct of the Government de facto, and of the subjects who pay obedience to it. It operates, however, generally speaking, in favour of the Insurgents, and therefore a Neutral State ought not to recognise them as entitled to the status of a belligerent unless the fact—and it is with the fact that Third or Neutral States are alone concerned—of war, in the true dimensions of that calamity and scourge, really exist. There should be such an organisation of force, such a possession of material, such an occupation of territory, such a constitution of government, as take the contest out of the category of a mere rebellious insurrection or occasional skirmishes, and place it on the terrible footing of War.

In estimating the circumstances which compose such a fact, the character of the hostilities is to be considered; the existence of a maritime war is both more easily ascertainable, and necessitates an earlier decision on the part of Neutral, especially commercial, States, than a war strictly confined within territorial limits. The duty of protecting the commerce and the just interests of her subjects may compel a Neutral Maritime State to recognise belligerent rights at sea, for the sake of enforcing belligerent obligations, and the appointment of Consuls to a de facto government does not divest a Third State of its character of neutrality. During the recent American Civil War the whole question underwent much discussion, but so well established was the law, according to the international practice and theory of both States, that little, if any, difference will be found in their public documents with respect to the enunciation of it; the dispute was as to the facts—England maintaining, and the United States denying, that these constituted such a war as justified the recognition of the Southern States. There can, I venture to think, be little doubt that
impartial history will pronounce that the conclusion of
England was fairly drawn from the admitted premisses (h).
The strongest instance which modern history furnishes of
the refusal of a Neutral State to recognise the act of a de
facto Sovereign was the refusal of the United States, under
President Johnson, to recognise the blockade of Matamoras,
proclaimed by the Emperor Maximilian, and at the time of
proclamation duly supported by a competent force. The
President proclaimed: "That the United States were
neutral in the war which afflicts the Republic of Mexico;"
that "one of the belligerents in the said war, namely, the
"Prince Maximilian, who asserts himself to be the Emperor
"in Mexico," had proclaimed the Blockade of Matamoras,
which " I, Andrew Johnson, &c., say is absolutely null and
"void against the Government of the United States" (i).
This was certainly a departure from a strictly neutral
position. It was the more remarkable because England,
France, and Spain had formally recognised Maximilian (k).
In the case of "The Trent," a question arose whether a
State which had been virtually recognised so far as to have
the rights and duties of a belligerent was entitled to send a
Diplomatic Envoy to a Neutral State on board a ship of
that State. The general opinion of civilised Powers was in
favour of the inviolability and exemption from capture of
the neutral ship conveying the Envoy. This question will
be again considered in the Chapter on Embassy.

(h) Mr. Dana's note (15) to Wheaton, s. 23, contains a fair and
learned statement.


(k) See, after the murder of Maximilian, Lord Stanley's answer, in the
House of Commons, as to withdrawing our accredited ambassador: a
temporary suspension of diplomatic relations resolved upon.—Ann. Reg.

Article 2 of the Convention between France, England, and Spain (vide
ante, p. 7) : "No acquisition of territory or special advantage was
to be obtained, nor were the States to exercise in the internal affairs of
Mexico any influence of a nature to prejudice the right of the Mexican
nation to choose and to constitute freely the form of its Government."—
And here it is desirable to explain the conduct of Great Britain at a particular period, which at first sight, and to superficial readers of history, may appear inconsistent with the law just laid down.

Pending the conflict between Great Britain and her North American colonies, she complained more than once of the unneutral behaviour of France; and the declaration of the Marquis de Noailles, in 1778, to the cabinet of St. James, that France had signed “un traité d'amitié et de commerce” with “les États-Unis de l'Amérique septentrionale, qui sont “en pleine possession de l'indépendance prononcée par leur “acte du 4 juillet, 1776” (l), was immediately followed by a declaration of war on the part of Great Britain against France; and, as far as that country was concerned, never was a war declared upon juster grounds.

It was declared, not on account of the mere establishment of diplomatic relations between France and the North American colonies, but on account of the long tissue of dark and treacherous machinations which France had begun to weave, under the veil of the strongest professions of amity and goodwill, against the peace, honour, and interest of Great Britain, on the first appearance of discontent in America in 1765, and which were brought to light by the act which has been mentioned; the fact rests upon the unquestionable authority of the memoirs, since published, of the agents employed by the French Government to excite the rebellion in North America (m).

(l) Martens, Nouvelles Causes célèbres, t. i. pp. 466-7. — Cause Quatrième.

(m) “To those who say there is something mean and paltry in negotiating a treaty as the mode of recognition, and who would, if they were ministers, rather resign than so disgrace themselves, I will only observe, that this has been always the mode. The minister of the United States was not admitted to the Court of France till after the signature of a treaty. That was the mode of recognition in that case; but there were other circumstances attending the act, widely different from our recognition of the late Spanish colonies. France not only recognised the United States before her territory was free, and without giving the mother
XVI. To the Virtual must succeed, in course of time, a Formal Recognition, evidenced by the sending of ambassadors, and the entering into treaties on the part of Foreign Powers, with the new State (n).

Speaking generally, two facts should occur before this grave step be taken, whereby the Neutral Power becomes the ally of one of the hitherto Belligerent parties.

1. The practical cessation of hostilities on the part of the old State, which may long precede the theoretical renunciation of her rights over the revolted member of her former dominions.

2. The consolidation of the new State, so far at least as to be in a condition of maintaining International relations with other countries; an absolute bona fide possession of independence as a separate kingdom, not the enjoyment of perfect and undisturbed internal tranquillity,—a test too severe for many of the oldest kingdoms,—but there should be the existence of a Government, acknowledged by the people over whom it is set, and ready to acknowledge and competent to discharge International obligations;—where such a Government as this exists, the question of Formal Recognition is rather one which concerns the internal policy of other kingdoms, than a question of an International character.

XVII. But the refusal or the withholding of the consent of the old State, after the semblance of a present contest has ceased, upon the bare chance that she may one day or other recover her authority, is no legitimate bar to the complete and Formal Recognition of the new State by the other communities of the world, though it be desirable that this

country any offer of precedency, but, though in amity with us at the moment, mixed up with the act of recognition a treaty of alliance with the United States to enable them to achieve their independence."—Mr. Canning's Speech on the Address on the King's Speech on the opening of the Session, Feb. 15, 1822, Canning's Speeches, vol. v. p. 322.

Recognition should follow, and not precede that of the old State. Upon this point, both the reason of the thing, and the ancient and modern practice of nations, are quite decisive.

XVIII. It was not till nearly eighty years after the revolt of the United Netherlands, and nearly seventy years after their Declaration of Independence, that the Crown of Spain, by the Treaty of Munster, recognised (30th January, 1648) that Republic. But during that long interval every State in Europe, with the exception of Austria, recognised virtually and formally the new State of the United Provinces (o).

The revolt of Portugal from Spain on the 1st of December, 1640, seated the Duke of Braganza on the throne of that country. It was not till twenty-eight years afterwards that Spain acknowledged, by the Treaty of Lisbon, concluded on the 23rd of February, 1668, under the mediation of England, the independence of Portugal (p).

Within a year of the proclamation by the Cortes of the Duke of Braganza, a treaty of peace and alliance was entered into between Charles I. of England and John IV. of Portugal, wherein John is mentioned as a lawful sovereign, and the King of Castile as a dispossessed ruler, while the King of England alleges that he is moved to conclude the Treaty "by his solicitude to preserve the tranquillity of "his kingdoms, and to secure the liberty of trade of his "beloved subjects" (q).

Schmauss, i. 929. The Treaty is in Latin: "Tandem presentes Articuli et in iis comprehensa Pax, a Serenissimo Rege Magnæ Britanniæ, tanquam Mediatore et Conservatore, in gratiam utriusque partium, intra spatium quattuor mensium simili ter ratihabebitur et accepta feretur."
All the European Powers recognised the Commonwealth and Protectorate of England; and in the same manner they recognised Charles II., who acknowledged the binding force of all the treaties concluded during the time of the Republic in England.

On the other hand, the Recognition of the son of James II. of England, after the death of that exiled monarch, was justly resented by Great Britain as a gross insult and flagrant violation of the Law of Nations. The Father of the Prince so recognised had not been acknowledged or obeyed in England, but had been declared by the solemn resolution of the nation to have abdicated the throne of that country. This Recognition therefore led immediately to the formation of the Grand Offensive and Defensive Alliance between England, Holland, and the Emperor of Germany against France and Spain (r).

The Recognition of the North American States by France in 1778, and the peculiar circumstances attending it, which induced Great Britain to consider such an act as a *casus belli* against France, has been already adverted to.

XIX. It has been stated in the foregoing pages (s) that the refusal of Great Britain to recognise the Republic of 1792, was expressly grounded upon the monstrous proclamation which the French authorities promulgated at that time. Great Britain recognised, in common with the other European Powers, the Consulate in France, at the Peace of Amiens (1801), and was the only State which did not subsequently recognise the Empire.

On March 25th, 1825, Mr. Canning replied to the remonstrance of the Spanish minister with respect to the Recognition (at that time only virtual) by Great Britain of the South American Republics, in the following remarkable words:

---

(r) *Sir J. Mackintosh, ibid.*  
*Mémoires de St. Simon*, t. iii. p. 228.  
(s) Vol. i. p. 469.
"The example of the late revolution in France, and of the ultimate happy restoration of His Majesty Louis XVIII., is pleaded by M. Zea in illustration of the principle of unextinguishable right in a legitimate Sovereign, and of the respect to which that right is entitled from all Foreign Powers; and he calls upon Great Britain, in justice to her own consistency, to act with the same reserve towards the New States of Spanish America, which she employed, so much to her honour, towards revolutionary France.

"But can M. Zea need to be reminded that every Power in Europe, and specifically Spain amongst the foremost, not only acknowledged the several successive Governments, de facto, by which the House of Bourbon was first expelled from the throne of France, and afterwards kept for near a quarter of a century out of possession of it, but contracted intimate alliances with them all; and above all, with that which M. Zea justly describes as the strongest of de facto Governments—the Government of Bonaparte; against whom not any principle of respect for the rights of Legitimate Monarchy, but his own ungovernable ambition, finally brought combined Europe into the field? There is no use in endeavouring to give a specious colouring to facts, which are now the property of history. "The undersigned is, therefore, compelled to add, that Great Britain herself cannot justly accept the praise which M. Zea is willing to ascribe to her in this respect, nor can she claim to be altogether exempted from the general charge of having treated with the Powers of the French Revolution."

"It is true, indeed, that, up to the year 1796, she abstained from treating with revolutionary France, long after other Powers of Europe had set her the example. But the reasons alleged in Parliament, and in State Papers, for that abstinence, was the unsettled state of the French Government. And it cannot be denied that, both in 1796 and 1797, Great Britain opened a negociation for peace with the
Directory of France—a negotiation, the favourable conclusion of which would have implied a recognition of that form of Government; that in 1801 she made peace with the Consulate; that if, in 1806, she did not conclude a treaty with Bonaparte, Emperor of France, the negotiation was broken off merely on a question of terms; and that if, from 1808 to 1814, she steadily refused to listen to any overtures from France, she did so, declaredly and notoriously, on account of Spain alone, whom Bonaparte persistaciously refused to admit as party to the negocia- tion.

Nay, further, it cannot be denied that, even in 1814, the year in which the Bourbon dynasty was eventually restored, peace would have been made by Great Britain with Bonaparte, if he had not been unreasonable in his demands; and Spain cannot be ignorant that, even after Bonaparte was set aside, there was question among the allies, of the possible expediency of placing some other than a Bourbon on the throne of France.

The appeal, therefore, to the conduct of the Powers of Europe, and even to that of Great Britain herself, with respect to the French Revolution, does but recall abundant instances of the recognition of de facto Governments; by Great Britain, perhaps later, and more reluctantly, than by others, but by Great Britain herself, however reluctant, after the example set to her by the other Powers of Europe, and specifically by Spain (t).  

XX. The Revolution which seated Louis-Philippe upon the throne of France in 1830, and the Revolution which ejected him in 1848 and set up a Republic, and the Revolution which committed the Government of that kingdom to the present Emperor, were equally recognised by England and by other European Powers.

The formal Recognition of the South American Republics by Great Britain took place in 1825, and under the negocia-

(t) State Papers, vol. xii pp. 913-14.
tion of a treaty of commerce, while they were yet unacknow-
ledged by the mother country (u).

The formal Recognition of Greece as an absolutely inde-
pendent Power, may be said not to have definitively taken
place till May, 1832. But on the 6th of July, 1827, France,
Great Britain, and Russia interposed, in order to guarantee a
quasi independence to Greece, and covenanted by a secret and
additional article to send consular agents, and enter into com-
mercial relations within a month from the date of the treaty,
whether the Porte consented to or refused its conditions (x).

The formal Recognition of Belgium by the five Great
Powers, as has been already stated, took place without the
consent and against the protest of Holland; while that of
the present Kingdom of Italy was both without the consent
and against the protest of the States whose (y) dominions
were incorporated, with the exception of Austria. Even
while Francis the Second, King of the Two Sicilies, was
endeavouring to maintain his authority at Gaeta, England
recognised the annexation of Naples to the Kingdom of
Italy. It is to be observed, however, that England had

(u) See Mr. Canning's Speeches, vol. v. p. 323.
"Extensive commercial intercourse having been established for a
series of years between the dominions of his Britannic Majesty and the
territories of the United Provinces of Rio de la Plata, it seems good, for
the security as well as encouragement of such commercial intercourse,
and for the maintenance of good understanding between his said Bri-
nannic Majesty and the said United Provinces, that the relations now
subsisting between them should be regularly acknowledged and confirmed
by the signature of a treaty of amity, commerce, and navigation.
"For this purpose they have named their respective plenipotentiaries,
that is to say," &c.—Treaty of Amity, Commerce, and Navigation, between
His Majesty and the United Provinces of Rio de la Plata. Signed at
Buenos Ayres, February 2, 1825. (Presented to Parliament, May 16,
1825.)


(y) See the Reclamation of the Government of the Two Sicilies, Ann.
Reg. 1860, pp. 297-300; of the Pope, ib. 273, 274; King of Sardinia's
Letter to the Pope, 279; The Pope's Answer, 280. See also The King's
Address to the People of Southern Italy, ib. 290. Lord J. Russell's
Letters to Mr. Russell and Sir J. Hudson, ib. 293-4.
before this time remonstrated with the Government of Naples on the course which they were pursuing, and had actually withdrawn her ambassador from the Court. In 1860 the English Foreign Secretary wrote to the English Minister at Turin a remarkable dispatch on this subject. It was as follows:

Lord J. Russell to Sir J. Hudson.

"Sir,—It appears that the late proceedings of the King of Sardinia have been strongly disapproved of by several of the principal Courts of Europe. The Emperor of the French, on hearing of the invasion of the Papal States by the army of General Cialdini, withdrew his minister from Turin, expressing at the same time the opinion of the Imperial Government in condemnation of the invasion of the Roman territory.

"The Emperor of Russia has, we are told, declared in strong terms his indignation at the entrance of the army of the King of Sardinia into the Neapolitan territory, and has withdrawn his entire mission from Turin.

"The Prince Regent of Prussia has also thought it necessary to convey to Sardinia a sense of his displeasure; but he has not thought it necessary to remove the Prussian Minister from Turin.

"After these diplomatic acts, it would scarcely be just to Italy, or respectful to the other Great Powers of Europe, were the Government of Her Majesty any longer to withhold the expression of their opinion.

"In so doing, however, Her Majesty's Government have no intention to raise a dispute upon the reasons which have been given, in the name of the King of Sardinia, for the invasion of the Roman and Neapolitan States. Whether or no the Pope was justified in defending his authority by means of foreign levies; whether the King of the Two Sicilies, while still maintaining his flag at Capua and Gaeta, can be said to have abdicated—are not
"the arguments upon which Her Majesty's Government "proposes to dilate.
"The large questions which appear to them to be at "issue are these:—Were the people of Italy justified in "asking the assistance of the King of Sardinia to relieve "them from Governments with which they were discontented? and was the King of Sardinia justified in fur-"nishing the assistance of his arms to the people of the "Roman and Neapolitan States?
"There appear to have been two motives which have "induced the people of the Roman and Neapolitan States "to have joined willingly in the subversion of their "Governments. The first of these was, that the Govern-"ments of the Pope and the King of the Two Sicilies pro-"vided so ill for the administration of justice, the protection "of personal liberty, and the general welfare of their "people, that their subjects looked forward to the overthrow "of their rulers as a necessary preliminary to all improve-"ment in their condition.
"The second motive was, that a conviction had spread, "since the year 1849, that the only manner in which "Italians could secure their independence of foreign control, "was by forming one strong Government for the whole of "Italy. The struggle of Charles Albert in 1848 and the "sympathy which the present King of Sardinia has shown "for the Italian cause have naturally caused the association "of the name of Victor Emmanuel with the single autho-"rity under which the Italians aspire to live.
"Looking at the question in this view, Her Majesty's "Government must admit that the Italians themselves are "the best judges of their own interests.
"That eminent jurist Vattel, when discussing the law-"fulness of the assistance given by the United Provinces "to the Prince of Orange when he invaded England, and "overturned the throne of James II., says, 'The autho-"rity of the Prince of Orange had doubtless an influence on "the deliberations of the States General, but it did not lead "them to the commission of an act of injustice; for when a
"people from good reasons takes up arms against its "oppressor, it is but an act of justice and generosity to "assist brave men in the defence of their liberties.'
"Therefore, according to Vattel, the question resolves "itself into this: Did the people of Naples and of the "Roman States take up arms against their Governments "for good reasons?
"Upon this grave matter Her Majesty's Government hold "that the people themselves are the best judges of their "own affairs. Her Majesty's Government do not feel "justified in declaring that the people of Southern Italy "had not good reasons for throwing off their allegiance to "their former Governments; Her Majesty's Government "cannot, therefore, pretend to blame the King of Sardinia "for assisting them. There remains, however, a question "of fact. It is asserted by the partizans of the fallen "Governments that the people of the Roman States were "attached to the Pope, and the people of the Kingdom "of Naples to the dynasty of Francis II., but that Sardi- "nian agents and foreign adventurers have by force and "intrigue subverted the thrones of those Sovereigns.
"It is difficult, however, to believe, after the astonishing "events that we have seen, that the Pope and the King of "the Two Sicilies possessed the love of their people. How "was it, one must ask, that the Pope found it impossible to "levy a Roman army, and that he was forced to rely almost "entirely upon foreign mercenaries? How did it happen, "again, that Garibaldi conquered nearly all Sicily with "2,000 men, and marched from Reggio to Naples with "5,000? How, but from the universal disaffection of the "people of the Two Sicilies?
"Neither can it be said that this testimony of the popular "will was either capricious or causeless. Forty years ago "the Neapolitan people made an attempt regularly and "temperately to reform their Government, under the "reigning dynasty. The Powers of Europe assembled at "Laybach resolved, with the exception of England, to put "down this attempt by force. It was put down, and a
large foreign army of occupation was left in the Two
Sicilies to maintain social order. In 1848 the Neapolitan
people again attempted to secure liberty under the Bourbon
dynasty, but their best patriots atoned, by an imprison-
ment of ten years, for the offence of endeavouring to free
their country. What wonder, then, that in 1860 the
Neapolitans, mistrustful and resentful, should throw off
the Bourbons, as in 1688 England had thrown off the
Stuarts?

It must be admitted, undoubtedly, that the severance of
the ties which bind together a Sovereign and his subjects
is in itself a misfortune. Notions of allegiance become
confused; the succession of the Throne is disputed;
adverse parties threaten the peace of society; rights and
pretensions are opposed to each other and mar the harmony
of the State. Yet it must be acknowledged on the other
hand that the Italian revolution has been conducted with
singular temper and forbearance. The subversion of ex-
sting power has not been followed, as is too often the case,
by an outburst of popular vengeance. The extreme views
of democrats have nowhere prevailed. Public opinion has
checked the excesses of public triumph. The venerated
forms of constitutional monarchy have been associated
with the name of a Prince who represents an ancient and
glorious dynasty.

Such having been the causes and the concomitant cir-
cumstances of the revolution in Italy, Her Majesty's
Government can see no sufficient ground for the severe
censure with which Austria, France, Prussia and Russia
have visited the acts of the King of Sardinia. Her
Majesty's Government will turn their eyes rather to the
gratifying prospect of a people building up the edifice of
their liberties, and consolidating the work of their inde-
pendence, amid the sympathies and good wishes of
Europe.

I am, &c.

(Signed) "J. Russell." (z)
“Placuit gentibus” (a), then, both in theory and practice, to recognise after the lapse of a reasonable period of time new States that have, de facto, achieved an independent existence, whether the original mother countries have or have not acquiesced in this order of things (b).

It has been said that to refuse Recognition, while the issue is at all doubtful, or the conflict not wholly abandoned, is not an offence against the Law of Nations (c); at the same time it may often border upon an injury, as may the recalling of an ambassador, which is yet by itself no casus belli.

XXI. It is well remarked by Hegel, that when Napoleon, before the Peace of Campoformio, said, “The French Republic no more needs recognition than the sun requires to be recognised,” he expressed in these words nothing more than the strength of the existing fact, which carried with it a practical recognition, whether expressed in language or not (d).

XXII. Nevertheless, Recognition is a right which other States are under an obligation to render in such a case, for various reasons; and amongst others this reason should be mentioned, namely, that the effect of non-Recognition places the subjects of the revolted province in a very disadvantageous position, with respect to the municipal tribunals of other countries. It is a firmly established doctrine of British and North American jurisprudence, to say nothing of the law of other countries, that it belongs exclusively to Governments to recognise new States; and that until such Recognition, either by the Government of the country in whose tribunals a suit is brought, or by the Government to which the new State belonged, Courts of Justice are

(a) See vol. i. p. 39.
(b) Papers relative to the Affairs of Greece: Published in London, 1835.
(c) Oppenheim, p. 213. See also a careful and elaborate note by Mr. Dana to his edition of Wheaton, s. 27, n. 16, on the practice of the United States in this matter.
(d) Hegel, Naturrecht und Staatswissenschaft: Werke, b. viii. s. 331 (Ed. Berlin, 1840).
bound to consider the ancient state of things as remaining unaltered.

Thus, in *The City of Berne in Switzerland v. The Bank of England*, it was decided that a Judicial Court cannot take notice of a foreign Government not acknowledged by the Government of the country in which that Court sits, and that the fact of acknowledgment is matter of public notoriety (*e*).

And in *Dolder v. The Bank of England*, the Court refused to order dividends, received before the bill filed, of stock purchased by the old Government of Switzerland, to be paid into Court by the trustees, on the application of the present Government, without having the Attorney-General a party (*f*).

In the case of *Thompson v. Powles*, it appeared that a revolted colony of Spain, not recognised as an independent State by Great Britain, executed bonds at six per cent. interest, as securities for a loan. P., acting in collusion with B., a holder of the bonds in England, by falsely representing that he had purchased some of them, induced the plaintiff to become a purchaser; and it was held, on demurrer, that the bonds were not usurious, as it did not appear, by the bill, that the contract for the loan was made, or the amount of it to be paid in this country; that P. and B. would have been answerable to the plaintiff for losses sustained upon his purchase; but that, as the original contract was made with a Government not acknowledged by Great Britain, the Court could not relieve him (*g*).

In *Taylor v. Barclay* (*h*), it also appeared that, to prevent a demurrer to a bill, it was falsely alleged in it that a revolted colony of Spain had been recognised by Great Britain as an independent State: the Court held itself bound to know, judicially, that the allegation is false, and not to give it the intended effect.

---

*e* 9 *Vesey Rep.* p. 347.

*f* 10 *Vesey*, 352; 11 *Vesey*, 283.

*g* 2 *Simon's Rep.* 194.

*h* *Ib.*, 213.
RECOGNITION.

So in the case of the *The Manilla*, ports and places of St. Domingo, not in possession of the French, were excepted out of the general character of the island as an enemy's colony, since the Orders in Council had recognised them as open to *British* trade (i).

In the more recent case of *The United States of America v. Wagner* (k), it was held by the Court of Appeal in Chancery reversing the judgment of Vice Chancellor-Wood, that a foreign sovereign State adopting the republican form of government, and recognised by the Government of Her Majesty, can sue in the Courts of Her Majesty in its own name so recognised.

In the United States of North America a similar doctrine has been held. It has been laid down by their Courts that it is the exclusive right of Governments to acknowledge new States arising in the revolutions of the world; and until such Recognition by their Government, or by that to which the new State previously belonged, the judicial presumption must be that the ancient order of things remains unchanged (l); therefore, when a civil war rages in a foreign nation, one part of which separates itself from the old established Government, and erects itself into a distinct Government, the Courts of the Union must view such newly constituted Government as it is viewed by the legislative and executive departments of the Government of the United States (m).

---

Yrisarri v. Clement, 3 *Bing*. 432.
(m) *The United States v. Palmer*, ib. p. 634.
See also *Debate on Foreign Enlistment Bill, June 10th, 1819.—Hansard, Parl. Deb. vol. xii.*, especially *Speeches of Sir J. Macintosh and Mr. Canning.*
XXIII. 3. The third instance, viz. the case of the Governor of an independent State assuming a new title, and claiming the Recognition of it, remains to be considered.

It is unquestionably competent to every sovereign ruler to assume any title of dignity or authority, which it may please him to adopt, or the nation to confer upon him. Formerly, indeed, the German Emperors claimed to be considered, in their alleged capacity of successors of the Roman Emperors, as universal sovereigns and chiefs of the Christian world, and to enjoy exclusively the title of "Majesty" (n).

Even towards the end of the fifteenth century, after this extravagant pretension had ceased, they still, for some time, claimed to be considered as the first among the crowned heads, then admitted to be their equals. But Napoleon attempted in vain to clothe the title of Emperor with the character of a higher class of sovereignty than that of simple monarchy. All the European kingdoms have long ago determined that the Crown is Imperial in every country where the ruler is a king.

The Emperors of Germany were not without a rival to their pretensions when these were at their highest; for till the beginning of the sixteenth century the Popes arrogated to themselves the right of conferring all distinctions of title and rank upon the rulers of all the kingdoms of the earth (o).

XXIV. But although rulers may assume what titles they please, there lies no obligation upon other States to recognise any changes in the accustomed forms and appellations, which

(n) Duck, de Usu et Auctoritate Juris Civilis, who wrote in the time of Charles I., combats this pretension.
Vattel, l. ii. c. iii. s. 34.
Schmalz, c. 36. s. 18.
Saalfeld, p. 182.
Heffters, p. 53, c. vii. s. 29.
Mably, t. i. p. 213.
Kübler, ss. 107-112.
(o) Saalfeld, p. 37. s. 18.
Vattel, l. ii. c. iii. s. 45.
Heffters, l B. 29. n. 4.
usage and convenience have hitherto sanctioned\(^{(p)}\). Nevertheless comity and the reason of the thing would induce other rulers to grant such Recognition\(^{(q)}\), except in the following instances.

1. Where the new title assumed is in opposition to or derogation from existing rights or pretensions of the rulers of other States\(^{(r)}\).

2. Where it introduces new obligations by way of concession, or otherwise, with respect to other States.

3. Where it tends to lower the dignity and degrade the character of the title already borne by the rulers of other States\(^{(s)}\).

These objections, and especially the last, apply only to the novel assumption of a title: for if its assumption has been sanctioned by time and usage, however inapt and ridiculous, it cannot be lawfully refused by other nations\(^{(t)}\).

XXV. As the object for which a ruler or a nation assumes a new title would be practically defeated, unless it obtained the sanction of other Powers, it has been the usual practice to obtain the promise of their Recognition beforehand, either by private Recognition or public Treaty.

Frederic I., King of Prussia, obtained the consent of the Emperor of Germany before he assumed the royal title in 1700—a title afterwards formally recognised by every European State\(^{(u)}\), though not by the Pope till 1786\(^{(x)}\). The present successor of Frederic has in this present year accepted and assumed the title of Emperor of Germany.

The Czar, Peter the Great, obtained the Recognition of

\(^{(p)}\) Martens, s. 128. Saalfeld, 37.

\(^{(q)}\) Schmalz, p. 183.

\(^{(r)}\) Mabey, i. 213, ii. 157.

\(^{(s)}\) Vattel, l. ii. c. iii. s. 44. Heffters, 1 B. 29.

\(^{(t)}\) Vattel, ib.

\(^{(u)}\) Martens, i. iv. c. 2. s. 128. De la Reconnaissance des Titres et Dignités, n. b.

\(^{(x)}\) Kübler, 107, n. c.
his title as Emperor, first by private negotiation and then by solemn provisions of treaty; as, for instance, by treaty with the Porte in 1739, with Great Britain in 1742 (y); the latter Power, however, expressly stipulating that by such Recognition it intended to convey no pre-eminence whatsoever over herself.

But Great Britain had already recognised the title de facto, and Prussia never made any difficulty about doing so; Sweden recognised it in 1723, Venice in 1726, Denmark in 1732, Charles VII., Emperor of Germany, in 1744; Francis I., in 1748, and also the Russian Empire. Poland did not recognise it till 1764, and then under conditions that the Empress Catherine II. should lay no claim to Red Russia.

In 1745 this matter assumed a shape which afterwards led to a curious diplomatic negotiation, for France and Spain in that year refused to recognise the title, without obtaining a pledge, in the shape of litterae reversales (réversales) that the Recognition should not carry with it any change in the accustomed ceremonials of the Courts. Spain obtained the réversale; but France had not succeeded in

(y) Martens, ib. 
obtaining it as late as 1762, when she in consequence refused Peter III. the title of Emperor: it was at last obtained by her, but again questioned, at the succession of Catherine II. a few months afterwards; but the matter was finally adjusted (z).

XXVI. The title of Emperor of the French, adopted by the First Napoleon in 1804, was recognised by every State in Europe except Great Britain.

At the dissolution of the German Empire, in 1806, the title of Emperor of Austria was universally recognised. One of the consequences of the Confederation of the Rhine was the assumption of new titles by old Potentates. The ancient Electors of Bavaria, Saxony, and Wurtemberg, became Kings; the ancient Elector of Baden, and the Landgrave of Hesse-Darmstadt, became Grand Dukes; and the Prince of Nassau a Duke; all which titles were recognised by the Treaties of Paris (1814) and of Vienna (1815). Among the Recognitions of new titles at the Congress of Vienna were,—the ancient Elector was recognised as King of Hanover (a), and the Dukes of Mecklenburgh, Weimar, and Oldenburgh (b) as Grand Dukes; the Emperor of Russia as King of Poland (c). Very recently the titles of Napoleon the Third, Emperor of the French, of the King of Greece, of the King of Italy, and of the Emperor of Germany have been recognised.

On the other hand, the five Great Powers, assembled at the Congress of Aix-la-Chapelle in 1818, unanimously resolved to refuse the Recognition of a new title of King, which the Elector of Hesse at that time had indicated his intention to adopt; grounding such refusal, among other reasons, upon the consideration, that the title adopted by a

(z) Martens, Causes célèb. t. ii. p. 89—Cause deuxième.
(a) Art. xxvi.
(b) Art. xxvii., xxxiv—xxxvi.
(c) Art. i.
ruler was not a question of mere etiquette, but was a fact connected with important political relations (d).

In making this refusal, they were at least supported by the express authority of Vattel (e), who observes, "Comme il " serait ridicule à un petit prince de prendre le nom de roi " et de se faire donner de la majesté, les nations étrangères, " en se refusant à cette fantaisie, ne feront rien que de " conforme à la raison et à leurs devoirs."

(d) "Protocole séparé. Séance du 11 octobre 1818, entre les cinq puissances.

"La conférence ait été informée de l'intention de Son Alt. Roïale, Électeur de Hesse, de prendre le titre de Roi, et aient pris connaissance des lettres adressées par ce prince aux souverains pour obtenir leur consentement à cette démarche:

"Les Ministres des cinq Cabinets réunis à Aix-l.-Ch., prenant en considération que le but de leur réunion est celui de consolider l'ordre actuel des choses, et non pas de créer de nouvelles combinaisons, considérant de plus que le titre porté par un souverain n'est pas un objet de simple etiquette mais un fait tenant à des rapports essentiels et à d'importantes questions politiques, sont d'avis, qu'en leur qualité collective ils ne sauraient prononcer sur cette demande ; pris séparément les Cabinets déclarent, qu'attendu que la demande de S. A. R. Électeur de Hesse n'est justifiée par aucun motif satisfaisant, il n'y a rien qui puisse les engager à y accéder.

"Les Cabinets prennent en même temps l'engagement de ne reconnaître à l'avenir aucun changement ni dans les titres des souverains ni dans ceux de prunes de leurs maisons sans en être préalablement convenus entre eux.

"Ils maintiennent ce qui a été statué à cet égard jusqu'ici par des actes formels. Les cinq Cabinets appliquent explicitement cette dernière reserve au titre d'Altesses Roïale, qu'ils n'admettront désormais que pour les chefs des maisons granducales, l'Électeur de Hesse y compris, et pour leurs héritiers présomptifs.

"Sign. Metternich, Richelieu, Castlereagh, Wellington, Hardenberg, Bernstorff, Nes-selrode, Capo d'Istria."


(c) L. ii. c. iii. s. 44.
CHAPTER V.

RIGHT TO EXTERNAL MARKS OF HONOUR AND RESPECT.

XXVII. There is a natural Equality among States as among Individuals; and it is as repugnant to the nature of a State as of a Person to be in a condition of servitude to the will of another (a).

This natural Equality of States is the necessary companion of their Independence—that primitive cardinal right, upon which the science of International Law is mainly built.

States, considered absolutely and apart from their condition as a member of the great society of nations, are entitled to the full enjoyment of a free moral individual personality—when considered practically and with relation to that society, they are entitled, in their intercourse with other States, to all the rights incident to a natural Equality (b).

No other State is entitled to encroach upon this Equality

(a) Martens, t. i. s. 125, c. ii.
Vattel, l. ii. c. iii., De la Dignité et de l'Égalité des Nations, de leurs Titres et autres Marques d'Honneur.
Ib. l. i. c. xxv. s. 191, De la Gloire d'une Nation.
Wheaton's Elem. i. c. iii.
Klüber, Recht der Gleichheit, Erster Theil, Drittes Capitel.
 Günther, i. 266.
Heffters, ss. 94, 103, 31.
Mackintosh, Miscellaneous Works, vol. iii. p. 468.

(b) Martens expresses the principle upon which this right is founded clearly and forcibly:—"Une nation, quelque puissante qu'elle puisse être, n'est pas en droit d'exiger de l'autre des démonstrations positives d'honneur, moins encore des préférences, quoique toutes soient autorisées à considérer comme lésion des démonstrations positives de mépris et des actes contraires à leur honneur."—Dr. des Gens, s. 125.
by arrogating to itself peculiar privileges or prerogatives, as to the manner of their mutual intercourse.

The relation of natural Equality is, in its character, essential, and incapable of being affected by any accidental attributes of another State, such as its greater extent of territory, the larger number of its inhabitants, the superiority of its resources, the form of its constitution, the title of its executive, or the remotest antiquity of its origin. All privileges claimed upon these or similar pretexts, are, for so much, derogations from the natural Equality of other States.

It is impossible to foresee how soon any departure from this rule may injuriously affect the liberty and independence of the State which submits to it. Hence the real value of those external marks of honour and respect, so carefully embodied in the ceremonies and etiquette of nations, but which have been, it must be confessed, often carried to an extent in which a sober regard for the true end was lost in an idle unreflecting attachment to the means, or under pretence of which the unlawful object of fostering ambition has been substituted for the lawful object of securing independence.

Nevertheless, it has been said with equal truth and beauty, — "The king's honour is that of his people. Their real honour and real interest are the same. A clear, unblemished character comprehends not only the integrity that will not offer, but the spirit that will not submit to, an injury; and whether it belongs to an individual, or to a community, it is the foundation of peace, of independence, and of safety. Private credit is wealth; public honour is security. The feather that adorns the royal bird supports his flight; strip him of his plumage, and you fix him to the earth" (c). "A wrong done" (said the high authority of Sir James Mackintosh) "to the humblest British subject, an insult offered to the British flag flying on the slightest skiff, is, if unrepaired, a dishonour to the

(c) Letters of Junius, xlii.
"British nation" (d). And in the sober language of Vattel:

"Puisque la gloire d'une nation est un bien très-reel, elle "est en droit de la défendre, tout comme ses autres avan-
"tages. Celui qui attaque sa gloire lui fait injure; elle est "fondée à exiger de lui-même, par la force des armes, une "juste réparation. On ne peut donc condamner les mesures "que prennent quelquefois les souverains, pour maintenir "ou pour venger la dignité de leurs couronnes. Elles sont "également justes et nécessaires. Lorsqu'elles ne pro-
"cèdent point de prétentions trop hautes, les attribuer à un "vain orgueil, c'est ignorer grossièrement l'art de régner, et "mépriser l'un des plus fermes appuis de la grandeur et de "la sûreté d'un état" (e).

This end, therefore, is always to be kept in view—namely, that the honour of a nation is an outwork of the citadel of its independence (f). Independently, however, of this con-
sideration, every State, like every individual, has a sub-
stantive right to maintain and preserve its reputation.

XXVIII. Perhaps this right will obtain its best general exposition from a consideration of the acts which have been treated as an invasion of it—of wrongs done with respect to it. They seem to admit of the following classification:—
1. Insults offered to the Head or Executive Power of a State, through the official organs of another State.
2. Through the acts of a subject of another State.

XXIX. Among the first class are to be reckoned injurious and insulting proclamations put forth by the Government of a country, or by its representative abroad. Among the second, libels published by private subjects upon the Executive Power of another State. Insults offered by individual subjects of another State, not recognised by, or,

(e) Vattel, 1. i. c. xv. s. 191.
(f) "Chaque état à droit au respect de sa personnalité morale et juri-
dique: il a donc un droit et un honneur. L'atteinte portée à l'honneur entraîne le droit d'exiger satisfaction."—Bluntschli, s. 83.
if need be from any peculiarity in the circumstances, disavowed by the State of which he is a member, can, generally speaking, be scarcely held to justify an International complaint; but in our own country, and at no very distant period, as has been already stated, the Crown has prosecuted subjects guilty of libelling Sovereigns with whom it was in amity (g); and it is the bounden duty of every State to make reparation for injuries inflicted upon the ambassador of any Foreign Power residing at its Court.

International Law forbids a libel upon a State, for the same reason that Municipal Law forbids a libel upon an Individual. The Individual is injured thereby in his social rights, in his relation to other individuals: the State, which has been recognised as a member of the society of societies, is also injured thereby in its relation to other societies.

But in the latter, as well as the former case, this right is not invaded by a free discussion of, and criticism upon, the external acts of the State or the Individual. A State has no cause of complaint if she has the same protection as an Individual. The Courts of Justice are open in both cases for the vindication of the offended party, and the reparation of the injury, but in neither case can the acts of the wrong-doer be exempted from the free censure of an independent judgment, and it is nobly said by Heffters, "When shall Falsehood cease, if it be allowed to usurp the place of Truth among those who carry on the History of the world?" (h)

Here, as in other instances, the doctrine of the Roman Law (i) is perfectly applicable to States: "Eum, qui nocentem infamavit, non esse bonum et æquum ob eam rem condemnari; peccata enim nocentium nota esse et

---

(g) Vide ante, vol. i. p. 447.—Prosecutions for libelling the Emperors of Russia and France.

(h) Heffters, ss. 31, 111.; and see authorities cited at the beginning of this Chapter.

(i) Inst. iv. 4. Cod. ix. 35. Dig. xlvii. 10. De injuriis et famosis libellis.
“oportere et expedire” (k); and again, “si non convicist
“consilio te aliquid injuriosum dixisse probare potes, fides
“veri a calumniá te defendit” (l).

XXX. A State may confer on its Governors any title of
dignity it pleases (m), and when this title has been used and
recognised, it will not allow another State to communicate
with it by any other mode of address (n). The general re-
marks of Vattel on this point, and the particular instance of
Prussia by which he supports them, are well deserving of at-
tention:—“Les titres, les honneurs ne décident de rien, il
“est vrai; vains noms, vaines cérémonies, quand ils sont
“mal placés; mais qui ne sait combien ils influent dans les
“pensées des hommes? C'est donc ici une affaire plus sé-
“rieuse qu'elle ne le paraît au premier coup d'œil. La
“nation doit prendre garde de ne point s'abaisser elle-même
“devant les autres peuples, de ne point avilir son con-
ducteur par un titre trop bas: elle doit se garder plus en-
core de lui enfler le cœur par un vain nom, par des hon-
neurs démesurés, de lui faire naître la pensée de s'arroger
“sur elle un pouvoir qui y répond; ou d'acquérir, par d'in-
justes conquêtes, une puissance proportionnée. D'un autre
“côté, un titre relevé peut engager le conducteur à soutenir
“avec plus de fermeté la dignité de la nation. Les conjon-
tures déterminent la prudence, et elle garde en toutes choses
“une juste mesure. La royauté, dit un auteur respectable,
“et qui peut en être cru sur la matière, la royauté tira la
“maison de Brandebourg de ce joug de servitude où la maison
“d'Autriche tenait alors tous les princes d'Allemagne. C'était
“une amorce que Frédéric 1er jetait à toute sa postérité, et par
“laquelle il semblait lui dire, 'Je vous ai acquis un titre, rendez-
“vous-en digne; j'ai jeté les fondements de votre grandeur, c'est
“à vous d'achever l'ouvrage’” (o).

(k) Dig. xlvii. 10. 18.
(l) Cod. ix. 35. 5.
(m) Vattel, l. i. c. iii. ss. 41, 42, 43, and note.
(n) Martens, Droit des Gens, s. 125.
(o) Vattel, l. ii. c. iii. s. 41.
XXXI. This matter has already undergone some discussion in the preceding Chapter.

Any injury done or insult offered to the outward insignia of a State's personality are violations of the Right of which we are treating (p); for instance, counterfeiting the coin, debasing its value by alloy (q), usurping the heraldic arms, as Mary Queen of Scots did those of the Queen of England; assuming the title, as the British kings, long after all pretext for it had ceased, injuriously continued to assume the title of King of France (r). Last, though by no means least, insults offered to the flag, the emblem of the national life, are all invasions of the Right to Honour and Respect for which satisfaction may be demanded and reparation ought to be made. The sensitiveness of all nations to any insult offered to their flag has always been very tender; such an indignity has always called for speedy atonement and full reparation.

In 1784, the Emperor of Austria attempted, in violation of the existing law, to open the navigation of the Scheldt; and sent a brig, bearing the Imperial Flag, from Ostend to Antwerp, with orders to ascend that river. The ship refusing to go back to sea when ordered to do so by the commander of a Dutch ship of war, was fired upon and compelled to anchor. The Emperor withdrew his ambassador from Holland, "devant considérer l'insulte faite à son pavillon comme une déclaration de guerre" (s), and demanded "une satisfaction éclatante." The Dutch made an ample apology for this alleged insult (t), though it does not seem that under the circumstances any apology was fairly due.

(p) Bluntschli, s. 82.
(q) Vattel, l. i. c. x. s. 108. "Des principes que nous venons d'établir, il est aisé de conclure, que si une nation contrefait la monnaie d'une autre, ou si elle souffre et protège les faux-monnayeurs qui osent l'entreprendre, elle lui fait injure."
(r) George III. first discontinued it.
(s) Martens, Causes célèbres, t. ii. p. 242.
(t) Ib. 270, 271.
When in 1849 (u), Austria stated the grievances which had induced her to withdraw her ambassador from Rome, she enumerated among them that "the Austrian flag and the "arms of the empire, on the palace of our ambassador at "Rome, were insulted and torn down; and although the Holy "Father himself condescended to express to the ambassador "his deep concern at this gross violation of International "Rights, yet his government was overawed by the licen-
"tiousness of faction, and unable to make reparation for the "injury which was done."

The flag and the arms were, on the restoration of the Pope, put up again with due honours on the part of the Roman authorities.

XXXII. "Ut belli occasio evitetur tractandum quoque, "quando et quorum navibus præstanda sit réverentia" (x), is the language with which the great Dutch jurist opens the once much-vexed subject of Maritime Ceremonials: his reason for discussing a subject, upon which his authority is perhaps the greatest, being, that war may be prevented, into the horrors of which his own country had more than once been plunged by disputes upon this point of International honour.

Maritime ceremonials, in time of peace, are either—1. Recognition of Sovereignty; or 2. Marks of conventional courtesy or comity. These acts of comity, like all others (as has been already observed), sometimes assuming, through the force of treaty or long usage, the character of positive law.

They are paid to ships of war; to ports, fortifications, harbours; to Sovereigns, or the Representatives of Sovereigns; independent States, monarchical or republican.

They consist in striking the flag (supparum et summi

---

(x) Bynkershoek, De Dominio Maris, cc. ii, iv. Quæst. Jure. Publ. l. ii. c. xxi. This is the leading authority upon this subject.
Vattel, l. ii. c. iv. 38.
Martens, ss. 158, 163.
Klüber, ss. 117-122.
Wheaton, Elem. i. c. iii. 7, p. 155.
aplustris submissio—salut du pavillon—der Flaggenstreichungen); lowering top-sails and striking flag; lowering the sails (velorum demissio—salut des voiles—das Segelstreichen, die Lösung); firing a certain number \( y \) of guns (salut du canon—Lösung der Canonen).

XXXIII. 1. Maritime ceremonials can only be claimed as Recognitions of Sovereignty where the sea is subject to the sovereign who claims them, that is to say, within cannon-shot of the shore, and within those parts of the sea already treated of in a former Chapter (z).

To these should be added, that portion of the sea which is actually occupied by a fleet; that portion is, during the actual period of the occupation, under the dominion of the State represented by the fleet; as the temporary occupation of foreign territory by an army places it for the time under the occupation of the State which the army represents.

In the twenty-first chapter of his second book, Quæstiones Juris Publici, Bynkershoek, referring to his former work, De Dominio Maris, and the thesis, "nullum mare exterum " nunc esse in cujusquam Principis dominio, cum nullum a " quoquam Principe possideatur," therein successfully maintained, observes, "his omnino consequens est, qui imperat " mari proximo rectè etiam imperare, ut et quemadmodum ibi " salutetur."

Thus the Dutch States (A.D. 1690), "optimo jure," decreed that the King of Denmark's demand with respect to the salutation of the fortress of Cronenburg in the Baltic should be complied with; and, " nec minus rectè," in 1671 decreed that their naval commanders should salute, when they came with-

---

(y) The number is generally equal; Sweden, it is said, alone firing an unequal number.—Martens, s. 158. n. The exact number has been often the subject of dispute, and has generally been settled by the express provisions of Treaty with the Barbary States: e. g., Spain and Tripoli (1784), Great Britain and Tripoli (1694 and 1746), United States of North America and Tripoli (1805), Great Britain and Tunis (1740–1751), Holland and Tripoli (1728), France and Tripoli (1793), France and Morocco (1767).

(z) Vide ante, vol. i. pt. 3. cc. 4, 6, 7, 8.
in cannon-shot of a State, according to the manner prescribed by that State, whether their salute was or was not returned; “quemque enim esse dominum in suo imperio et quemquam “advenam ibi subditum” (a).

The order of Philip II. (A.D. 1563), that the flag bearing the Imperial arms should not be lowered in any foreign port, and the act of the French ship which passed the Genoese citadel in 1691 without saluting, were both, according to Bynkershoek, violations of International Law.

XXXIV. 2. Maritime ceremonials in the open sea, or in any other places than those subject to the dominion of a State, must depend upon Comity, or mutual agreement. Zouch (b), with that correct opinion upon the principles of International Law which distinguished him, applauds the decision of the superior French Court which reversed the sentence of an inferior Court for condemning a Hamburg vessel which had refused to salute a French ship in the Spanish seas. Bynkershoek of course sanctions this opinion. According to usage (c), however, merchant vessels are obliged to salute a vessel of war generally by cannon-shot, and also by lowering flag and sails; — the salute by sails is

(a) S. 23, t. i. *Legum Nauticarum*, cited by Bynkershoek, ib.


(b) *De Jure Fecialii*, pt. 2. s. 8, 14, p. 132 (ed. Oxon. 1650). “Utrum quod nautæ Principis alterius navi bellicæ vela non submittent, navis pro prædâ capi possit?”

(c) Klüber, s. 122.

Martens, s. 159.

VOL. II.
the most usual (d). Ships of war of equal rank are not constrained by custom to salute at all: those of inferior ought to salute those of superior rank. A single ship of war salutes a fleet or squadron; and an auxiliary squadron salutes the principal fleet.

XXXV. By an Ordonnance of the King of the French, 1831 (1st July), the following rules of Maritime Salute are prescribed for French ships of war:—

“Art. II. Toutes les fois qu'un bâtiment français sera salué par un bâtiment de guerre étranger, le salut sera rendu coup pour coup audit bâtiment étranger, quels que soient les grades des officiers commandants, et soit qu'il ait été traité ou non de salut, pourvu toutefois que ce salut n’excède pas 21 coups de canon.

“Art. III. Les commandants des bâtiments de guerre français arrivant sur une rade étrangère, se conformeront, quant aux visites, aux usages généralement reçus dans le pays où ils se trouveront” (e).

XXXVI. The following orders are issued by the British Crown to her ships of war, with respect to saluting the flags of other Powers at sea.

“All salutes from ships of war of other nations, either to Her Majesty’s forts or ships, are to be returned gun for gun.

“A British ship or vessel of war meeting at sea a foreign ship of war bearing the flag of a flag-officer, or the broad pendant of a commodore commanding a station or squadron, and superior in rank to the officer of the British ship or vessel, shall salute such foreign flag-officer or commodore with the number of guns to which a British officer of corresponding rank is entitled, upon being assured of receiving in return gun for gun: and in the event of the British ship meeting with such foreign flag-officer or commodore in a foreign port, similar complimentary salutes with such

(d) De M. et De C. Index explicatif, Salut de Mer.
(e) De M. et De C. t. iv. p. 322.
"foreign flag-ship should be observed, if the regulations of "the place shall admit thereof" (f).

XXXVII. The regulations with respect to salutes from British ships to British men-of-war, are not strictly of an International character; but these regulations, and those relating to Colours, may perhaps be usefully mentioned in this place (g). By the laws of the sea, the ancient constitution of the Admiralty, and the usage of the realm, it is an offence against the King's prerogative to usurp or wear on board any private ship the flags, ensigns, jacks, or pendants worn by the ships of the Royal Navy (h).

In consequence of the Union with Ireland, which commenced on the 1st of January, 1801, King George III. issued a proclamation of that date, appointing a certain ensign, drawn in the margin, to be carried by all merchantmen of the United Kingdom, and prohibiting the use of any other ensign in such ships; and also prohibiting them from wearing the Union Jack, or any pendants or colours usually worn by the King's ships, without a special warrant from the Crown or the Admiralty. Under this proclamation, the hoisting or wearing of such colours is a contempt of the Crown, and punishable as such by the Court of Admiralty (i).

In 1833, William Benson, master of the merchant steamship Lord of the Isles, was found guilty of contempt in wearing illegal colours; he having in or near the river Douro hoisted at the main peak a red pendant, which Captain Belcher of His Majesty's ship Ætna, came on board and seized. For this offence of wearing colours used by His Majesty's ships, the penalty of 50l. was inflicted, the Court having no power to mitigate the fine (k).

(f) Extract from Regulations relating to Salutes.
(g) The following remarks are extracted from The Law relating to Officers of the Navy (by Prendergast), part ii. p. 449.
(h) Life of Sir Leoline Jenkins, i. 97.
A penalty not exceeding 500L. is now annexed to this offence. The statute 17 and 18 Vict. c. 104, The Merchant Shipping Act 1854, s. 105, enacts:

"If any colours usually worn by Her Majesty's ships, or any colours resembling those of Her Majesty, or any distinctive National colours, except the Red Ensign usually worn by merchant ships, or except the Union Jack with a White Border, or if the pendant usually carried by Her Majesty's ships, or any pendant in any wise resembling such pendant, are, or is hoisted on board any ship or boat belonging to any subject of Her Majesty, without warrant for so doing from Her Majesty or from the Admiralty, the master of such ship or boat, or the owner thereof, if on board the same, and every other person hoisting or joining or assisting in hoisting the same, shall for every such offence incur a penalty not exceeding Five Hundred Pounds; and it shall be lawful for any officer on full pay in the military or naval service of Her Majesty, or any British officer of the Customs, or any British Consular officer, to board any such ship or boat, and to take away any such jack, colours, or pendant; and such jack, colours, or pendant shall be forfeited to Her Majesty."

The King v. Benson, 3 ib. 96.

The last cases have been The Queen, in her Office of Admiralty, v. James N. Forbes, master of merchant vessel Lightning, for wearing illegal colours (7th March, 1855); and The Queen, v. Ewen, 2 Jur. N.S. 454. It usually happens that the offending party, on being served with the warrant of arrest, memorialises the Board of Admiralty, expressing contrition for the offence, and that on payment of the costs incurred, the fine is remitted. Ireland, as to all matters of Instance jurisdiction, is governed by its own Court of Admiralty; but neither Ireland nor Scotland have any Admiralty Prize jurisdiction. As to former provisions on this subject, see—

3 Geo. IV. c. 110. s. 2 (smuggling, 500L.).
6 Ib. c. 108. s. 15 (smuggling, 50L.).
3 & 4 Will. IV. c. 50. c. 53. s. 9 (smuggling, 50L.).
4 Ib. c. 13. s. 11 (smuggling, not above 500L.).
8 & 9 Vict. c. 87. s. 10, repealed by 17 & 18 Vict. c. 120.
And according to the instructions issued by the authority of the Queen's Government (l),

"If the Consul is informed that any British vessel hoists "improper colours, he will send or go on board, and will seize "the colours so hoisted, and will for that purpose order "the Master to haul them down and deliver them up to "him."

It is also a contempt of the Crown, if a British merchant-vessel pass a ship of the Royal Navy without striking topsail: and the Court of Admiralty, on complaint of the offence, will arrest the master of the merchantman to answer for the contempt. An instance of this nature occurred on the 4th of November, 1829, when the Court of Admiralty issued a warrant of arrest against the master of the schooner Native for contempt in passing His Majesty's ship Semiramis, in Cork harbour, without striking or lowering her royal, being the uppermost sail she was then carrying." (m)

XXXVIII. 3. Maritime ceremonials in particular seas, as distinguished from the open sea, and from the sea within cannon-shot distance from the shore, remain to be considered; such were, in former days, the claims of maritime honours of Venice in the Adriatic, of Genoa in the Ligurian, of France in another portion of the Mediterranean, and such are, at this day, the claims of Denmark with respect to ships entering the Baltic, and of Great Britain with respect to ships in the narrow seas which surround her coast.

Bynkershoek (n), it has been already observed, denies their claims. He does not object to their being conceded as matters of Comity (comiter observari); but he denies that they can be demanded of right (juris).

The claims of Denmark have been the subject of various treaties, the last of which was made on the 15th of January,

---

(l) Proposed by the Board of Trade, approved by Secretary of State for Foreign Affairs, 1855.


1829, with Russia. The last article of this Treaty refers to
a protocol signed at Aix-la-Chapelle on the 21st November,
1818, which recommended a general convention upon the
subject of maritime ceremonials between all the maritime
Powers. This has never been executed; but the Treaty
between Denmark and Russia provides that the salute of
vessels of war, "dénue d'utilité réelle est généralement tombé
" en désuetude parmi les nations européennes," shall undergo
such modifications as to take away most of the previously ex-
isting formalities between these two Powers on this subject.

The Treaties between Great Britain and Holland upon
the subject of the particular claims of the former to mar-
time honours in the narrow seas, are those of 1662, 1674 (o),
1784 (p).

XXXIX. In the above enumeration are omitted that
class of injuries which relate to the refusal of that Precedence
which custom has established among the representatives of
nations; the consideration of this class of injuries seems to
belong more properly to the Chapter on Ambassadors (q); as
it rarely happens that the Governors of a State meet
together in person, as well as by representatives. Such
Congress, however, have taken place. Not to go further
back than 1814, there have been no less than five Con-
gresses since that time, at which European Potentates have
met together in person.

1. The Congress of Vienna, closed in the month of June,
1815.

before, some after a.d. 1674), relating to striking the flag.
Vide ante, vol. i. p. 220.

(p) By the second article of the Treaty of 1784, it is provided, "A
l'égard des hommes du pavillon et du salut en mer par les vaisseaux de
la République vis-à-vis de ceux de S. M. Britannique, il en sera usé
respectivement de la même manière qui a été pratiquée avant le com-
mencement de la guerre qui vient de finir."
De M. et de C. i. 323.

(q) Vide post.
2. The Congress of Aix-la-Chapelle, in 1818.
3. The Congress of Troppau, in 1820.
4. The Congress of Laibach, in 1821.

The motives assigned for these two last were the alleged revolutionary movements in Naples and Piedmont, rendering the state of Europe insecure. Upon a similar allegation with respect to the disturbed state of Spain, a fifth Congress was held at Verona, in 1820.

XL. It is of course competent to States to renounce, either tacitly by usage which they have long acquiesced in and recognised, or openly by treaty, any portion of the Rights incident to their primitive equality.

As in all conferences some persons must precede others, a sense of necessity and a regard for order, and perhaps also a voluntary homage to the real position and consequence of different States, have introduced, into Europe at least, a certain rule and custom, which it is the interest, if not the duty, of all States to adhere to (r). At the period when the system of ceremonial honours and distinctions began to grow up in Europe, the most powerful States were governed by an emperor (s), or by a king upon whose head the crown had been placed, with all the solemnity and sanctity which religious rites could impart. These circumstances conspired

(r) Martens, l. iv. c. ii. s. 25.

(s) The idea of the paramount superiority of the Emperors of Germany long prevailed in Europe, and is actually combated by our great English civilian, Arthur Duck, who wrote in the seventeenth century. It was derived from the notion of their being successors, through Charlemagne, of the Roman, as distinguished from the Greek, Emperor. At the time of Charlemagne, Vattel remarks, there was "une idée récente de la majesté du véritable empire romain."—L. ii. c. iii. s. 40. He cites from Bodinus, De Repubbica, l. i. c. ix. p. m. 139. The observation of Bartolus was, that they were heretics who denied that the Emperor was the sovereign paramount of the world. Bartolus died in 1356. The notion of the real importance attached to the title of Emperor caused many States, in the middle ages, to be careful in designating their realms as an "Empire," and their crown as "Imperial." Great Britain has long spoken of her "Imperial Crown" in all her public acts.

Martens, s. 127, note 6.
with the vast actual superiority of their wealth, influence, power, to procure for emperors and kings those privileges and prerogatives over other States which are universally designated as Royal Honours (Honores Regii, Honneurs royaux, königliche Ehren) (t).

Vattel, though strongly indisposed (u) to allow the existence of any prerogative as incident to a monarchical form of government, nevertheless observes: "Si les traités, ou " un usage constant, fondé sur un consentement tacite, ont " marqué les rangs, il faut s'y conformer. Disputer à un " prince le rang qui lui est acquis de cette manière, c'est " lui faire injure, puisque c'est lui donner une marque de " mépris, ou violer des engagements qui lui assurent un " droit" (x).

And in another place (under the head of "Des égards " mutuels que les souverains se doivent") he says: "Le " plus grand monarque doit respecter dans tout souverain le " caractère éminent dont il est revêtu. L'indépendance, " l'égalité des Nations, des devoirs réciproques de l'humanité, " tout l'invite à marquer au conducteur, même d'un petit " peuple, les égards qui sont dus à la qualité. Le plus " faible État est composé d'hommes, aussi bien que le plus " puissant, et nos devoirs sont les mêmes envers tous ceux " qui ne dépendent point de nous.

" Mais ce précepte de la loi naturelle ne s'étend point au-

(t) Vide post, pt. iii. c. i. Rights of Sovereigns.

(u) L. ii. c. iii. s. 38.—"La forme du gouvernement est naturellement étrangère à cette question. La dignité, la majesté, réside originairement dans le corps de l'État; celle du souverain lui vient de ce qu'il représente sa Nation. L'État aurait-il plus ou moins de dignité, selon qu'il sera gouverné par un soul ou par plusieurs? Aujourd'hui les rois s'attribuent une supériorité de rang sur les républiques; mais cette prétention n'a d'autre appui que la supériorité de leurs forces. Autrefois la république romaine regardait tous les rois comme bien loin au-dessous d'elle. Les monarques de l'Europe, ne trouvant en leur chemin que de faibles républiques, ont désigné de les admettre à l'égalité. La république de Venise et celle des Provinces-Unies ont obtenu les bonnes des têtes couronnées; mais leurs ambassadeurs cèdent le pas à ceux des rois."

(x) Vattel, l. ii. c. iii. s. 40; vide also s. 46.
"delà de ce qui est essentiel aux égards que les Nations "indépendantes se doivent les unes aux autres; en un mot, "de ce qui marque que l'on reconnaît un État, ou son sou- "verain, pour être véritablement indépendant et souverain, "digne par conséquent de tout ce qui est dû à cette qualité. "Du reste, un grand monarque étant, comme nous l'avons "déjà fait observer, un personnage très-important dans la "société humaine, il est naturel qu'on lui rende, en tout ce "qui n'est que pur cérémonial, sans blesser en aucune "manière l'égalité des droits des Nations, qu'on lui rende, "dis-je, des honneurs auxquels un petit prince ne saurait "prétendre, et celui-ci ne peut refuser au monarque toutes "les déférences qui n'intéressent point son indépendance et "sa souveraineté" (y).

XLI. A State, once possessed of certain International privileges, retains them, whatever change her internal constitution may have undergone: Cromwell would not allow the slightest mark of honour which had been paid to the representatives of the Monarchy to be omitted towards those of the Republic of England.

In the Treaties between the French Republic (z) and the other European Powers, it was expressly stipulated that the same ceremonials as to rank and etiquette which had been observed before the Revolution should be continued between them; and the same rule was observed towards the later Republic of France.

The Republics of Venice and the United Netherlands were always admitted to Royal Honours; though their Ambassadors yielded precedence to those of Crowned Heads.

The Republic of Genoa and the Order of Malta were never indisputably possessed of this privilege, though the former claimed equality with Venice, and precedence over Switzerland.

(y) Vattel, l. ii. c. iii. s. 47.
(z) Treaty, A.D. 1797. Campo Formio, art. 23.—Martens.
In later times, Switzerland collectively, not in its individual cantons, the United States of North America, the German Confederation (Deutsche Bund) (a); and it is presumed, the Empire of Brazil, have been considered entitled to this privilege.

The Sovereign States of Europe are (b) with respect to this matter of etiquette, classified into—

1. Those who are entitled to Royal Honours.
2. Those who are not.

1. It seems to be now an established principle of International etiquette, that the Crowned Heads of Europe are entitled to an equal rank, one having no precedence (Proedria, Protostasia, Précédence, Préséance) over the other.

XLII. At different periods of history, France, Spain, and Russia have laid claim to precedence over other States; but the claim appears never to have been allowed. At the Peace of Passarowitz (c) (1718), and in subsequent Treaties, that of Belgrade for example in 1738, Austria has covenanted with the Ottoman Porte for a perfect equality of rank. “Hæ nugæ seria ducent in mala.” But as various modes have been adopted to avoid the evils growing out of squabbles for precedence, sometimes it has been resolved that at Congresses and meetings each place shall be considered as the first; at other times, ambassadors have signed their names in the order of the alphabet. But the easiest expedient seems to be the use of the alternat, or alternative. By the

(a) Martens, l. iv. c. ii. s. 133.—“Il ne serait pas extraordinaire que la Confédération germanique, reconnue pour être puissance européenne, ne se crût pas tenue de céder, dans des occasions, le pas à une des têtes couronnées, ou même ne se crût autorisée à prétendre le pas sur ceux de ses membres qui ne portent point de couronne dans une autre qualité; cependant jusqu'à présent il n'y a pas encore eu d'occasion de contester sur ce point.”

(b) Klüber, ss. 91, 92.

(c) Günther, Band i. pp. 220, 233, 244.


Spain's dispute as to the "pas" with France was settled by the 27th article of the Bourbon Family Compact.
alternat (d), the rank and place of different States from time to time undergoes a change, which is determined by a regular order or by lot,—the same State occupying different places in the same ceremonial.

XLIII. In the signing of Treaties, the usage of the alternat is generally adopted, it being contrived that each State shall write its signature in the first place in the copy of the Treaty destined for it. This usage was adopted by the Quadruple Alliance at London in 1718, and at the Peace of Aix-la-Chapelle in 1748.

At the same time, even this sensible arrangement has occasionally been demurred to, protested against, or altogether rejected (e).

Sometimes, as at Utrecht in 1713 and Aix-la-Chapelle in 1748, each of the contracting parties has delivered to the other a copy of the Treaty signed by itself only (f).

Roman Catholic Sovereigns (g) have yielded precedence to the Pope as an acknowledgment of his character as Vicar of Christ and Sovereign Pontiff of the Roman Catholic Church; with a reservation of their own Right of Sovereignty.

The kingdoms whose Churches are subject to the Patriarch of the East, as Russia and Greece; and Great Britain, whose Catholic Church has no longer any relations with the Bishop of Rome as Patriarch of the West, accord no precedence on such ground. Nor does Prussia, nor the minor Protestant Powers of Germany, nor the Ottoman Empire, ever concede such precedence. But while Sovereign of the Roman States, the Pope was entitled to the Royal Honours mentioned above (h), and probably will be considered as

---

(d) Klüber, s. 104.
(e) Schmauss, i. 1743.
(f) Günther, b. i. pp. 229, 234, 238, 247, 274. Portugal in 1763; Treaty of Sardinia in 1748; Treaty of Aix-la-Chapelle; France; Hungary; Bohemia.
(g) Ib. 275.
(h) Günther, ib. s. 94.
still entitled to them by all Roman Catholics, if not also by Catholic and Protestant States. In the new Statute proposed by the Italian Government such Honours are expressly conceded to the Pope (i).

Neither the European States, nor States generally, have ever bound themselves by agreement or pact to any fixed or certain rule with respect to this question of precedence; though attempts have been made to enact a binding regulation upon the subject.

The great ecclesiastical councils, at which sovereigns were often present in person or by representative, furnished a ground for the interference of the Pope in this matter (k).

In 1504 Julius II. promulgated a table of precedence for the European States, founded upon a variety of reasons now generally acknowledged to be trifling and insufficient. This regulation (l), it is said, was never followed, not even in the Councils or in the Pope’s chapel, and, it need scarcely be said, is wholly without weight or influence upon International Law. The next attempt (m) was made by the eight European Powers who signed the Treaty of Paris in 1814. They nominated a Commission for the purpose of considering and reporting “des principes à établir pour régler le rang entre les couronnes, et de tout ce qui en est une conséquence.” The Commission did suggest a uniform rule (n), whereby all public ministers should be divided into three classes of—

1. Ambassadors or Nuncios.
2. Envoyés.
3. Chargés d’Affaires.

(i) "Art. 3. Il Governo Italiano rende al Sommo Pontefice nel territorio del Regno gli onori sovrani e gli mantiene le preminenze d’ onore riconosciutegli dai sovrani cattolici."

(k) Günther, t. i. p. 219.
(l) Klüber, s. 94.
Martens, s. 131.
(m) Klüber, s. 94, n. c.
Martens, s. 131, n. 6.
(n) De M. et De C. t. iii. p. 190, 1.
But great differences and doubts arose respecting this classification at the time, principally with respect to the rank which should be assigned to the Great Republics. And at the Congress of Aix-la-Chapelle, 21st November, 1818, at which Austria, Russia, France, Spain, and Great Britain were represented, a certain rule of precedence was agreed to by a protocol (o).

Though the regulation of etiquette was thus confined to the representatives of the five crowned heads, it appears to have been generally adopted as a rule of positive International Law (p). Regulations, adjusting the ceremonials for the reception of foreign ministers, were instituted by the United States of North America on the commencement of their career as an independent State in 1783 (q). These will be mentioned hereafter when the subject of embassies is considered.

XLIII. A. The Right we are treating of, flowing as it does from the essential equality of nations, extends to the subject of the language to be employed in International communications (r). No nation has a right to insist that a particular language, whether it be its own or that of another country, shall be exclusively employed in all communications with it.

Until the middle of the eighteenth century the Latin language—the medium through which Christianity and Civilisation have been conveyed to the West—continued to be employed as the channel of formal diplomatic intercourse (s).

(o) Actes final du Congrés de Vienne, art. 118, et son Annexe.
Klüber's Actes des Wiener Congress, Band viii. 3-98, 102, n. 108, f.; Band vi. s. 93, n. 204, f.
Martens, Man. Dipl. c. iv. a. 38.
(q) De M. et De C. t. i. p. 264.
(r) Klüber, ss. 113-114.
Wheaton's Elem. pp. 197, 198.
"Language, the leading principle which unites or separates the tribes of mankind."—Gibbon, vol. viii. c. xlvii. p. 338.
(s) Duck, De authoritate et usu Juris Civilis, p. 150, &c.
J. L. E. Putman, De usu linguae latinæ in vita civili causisque maximè
In this universal tongue, which has many recommendations as the bond of a common civilisation, are written, among others, the Treaties of Niméguen; of Ryswick; of Utrecht, 1713; of Baden, 1714; of the Quadruple Alliance of 1718; of Vienna, 1725 and 1738 (t).

The Pope continues to use the Latin language in his International acts.

The aggrandisement of the Spanish monarchy towards the end of the fifteenth century appears to have introduced for a short time the use of the Castilian tongue as a pretty general instrument of International intercourse. Since the reign of Louis XIV. the French language has been generally used as the diplomatic language of Europe, but under a protest preserving the dignity of other nations (u). So late as the year 1790, the Emperor of Austria, Leopold II., in his correspondence with Louis XVI. respecting the invasion of the right of the German princes in Alsatia, and the infringement thereby of the Treaty of Westphalia, complained that the correspondence of the French king was in the French language, contrary to the former usage, which required communications between Austria and France to be made in the Latin language; the letter of the Emperor was written in that language (x).

By the 120th article of the final act of the Congress of Vienna of 1815 (y) it is stipulated—"La langue française ayant été exclusivement employée dans toutes les copies

\textit{publicis}, cited by Klüber, u. a. 114. See note below, as to Quadruple Alliance.

(u) Schmauss, 1734.
(x) Schmauss, 1734.
(y) Peace of Radstadt (a.d. 1714), art. 33.
   " of Aix-la-Chapelle (1748), sep. art. 2.
   Alliance between France and Austria, sep. art. 2.
   Treaty between Poland and Prussia, 1773, art. 14.
   (x) Koch, c. xxvi.
   Wheaton's Hist. p. 347, note.
   (v) Martens, Recueil, &c., t. x. p. 430.
"du présent Traité, il est reconnu par les Puissances qui "ont concouru à cet acte, que l'emploi de cette langue ne "tirera point à conséquence pour l'avenir ; de sorte que "chaque Puissance se réserve d'adopter dans les négociations "et conventions futures la langue dont elle s'est servie "jusqu'ici dans ses relations diplomatiques, sans que le "Traité actuel puisse être cité comme exemple contraire "aux usages établis."

In later times, however, and more especially since Mr. Canning's brilliant administration of the foreign affairs of Great Britain, States have used their national language in their instruments of diplomatic intercourse, accompanying them, if necessary, with a translation in the language of the State with which they are in correspondence.

It appears to have been a maxim of the Ottoman Porte to regard no Treaty as of perfect obligation unless couched in its own language. The European States have avoided what might be thought a derogatory concession to this whim, by taking care that the Treaties with this Power should be written in divers languages.
CHAPTER VI.

TREATIES (a).

XLIV. The International obligations arising out of Natural or Customary Law may receive additions or restraints from specific Conventions or Treaties (b).

It has been already observed, that the consent of Nations is in some degree evidenced by the contents of Treaties, and that they constitute an important part of International Law (c).

(a) Grotius, l. ii. c. xi. de promissis; c. xii. de contractibus; c. xiii. de jure jurando; c. xiv. de eorum qui summum imperium habent promissis et contractibus et juramentis; c. xv. de fœderibus et sponsionibus; c. xvi. de interpretatione.

Vattel, l. ii. c. xii.–xvii.

Martens, l. ii. c. ii. 46.

Klüber, s. 141, u. s. w.

Wheaton, Elem. vol. i. p. 38, &c.

Heffters, ss. 144, 175.


(b) "At nobis accuratius instituenda partitio est, ut primum dicamus fœdera alia idem constituere, quod juris est naturalis, alia aliquid ei adjicere."

—Grot. l. ii. c. xv. s. 5.

"I can scarcely think that Ministers mean to contend that cession by Treaty does not give a right to possession. Where are we to look, therefore, to ascertain the right of a country to any place or territory, but to the last Treaty? To what would the opposite doctrine lead? France might claim Canada, ceded in 1763, or we Tobago, ceded in 1783. It might be urged that they took advantage of our dispute with our own Colonies, and that the Treaty gave no right. Canada, Jamaica, everything might be questioned. Where would be the power of Europe if these doctrines were to be acted on? Every country must continue in a state of endless perplexity, armament, and preparation. But, happily for mankind, a different principle prevails in the Law of Nations. There the last Treaty gives the right."—CHARLES JAMES FOX, Speech on the Russian Armament, 1792.

(c) Vide ante, vol. i. p. 44.
Treaties (traités, Völkerverträge, Tractate) are the written portion of that Law which binds together the Society of States, and they occupy a place in that system, which, in some degree, corresponds to the place occupied by statutes in the system of the Municipal and Public Law of independent States (d).

Moreover, the Right to enter into lawful Conventions or Treaties with other States is as unquestionably inherent in every independent State, as the right to make lawful covenants is inherent in every individual.

The contract of the individual, therefore, and the statute of the independent State, both furnish analogies for the elucidation of this branch of our subject. It would be foreign to the object of this work to dwell upon the necessity of the study of International Treaties to the Historian, and the Statesman; but it is proper to observe in this place, first, that existing Treaties contain the present Positive Law of Nations between the contracting parties; secondly, that abrogated Treaties often furnish a necessary means of construing those which are in force; while—if due and judicial regard be had to the occasion which produced them, the subject-matter of their stipulations, the object for which, and the epoch during which they were contracted, and the number and character of the nations which were parties to them—they are also of value as repositories of certain maxims of International Law, as records of the consent of nations to certain principles as regulating International Intercourse, and of the instrumental forms by which International consent is expressed and ratified (e). Upon a scrupulous fidelity in the observation of Treaties, not merely in their letter but in their spirit, obviously depends, under God, the peace of the world. Pacta sunt servanda is the pervading maxim of International, as it was of Roman jurisprudence (f).

(d) Warnkonig, Rechtsphilosophie, a. 218.
(e) Vide ante, vol. i. pp. 44, 52, 67.
(f) Dig. ii. 14. 1 pr.
The treaty-breaking State is the great enemy of Nations, the disturber of their peace, the destroyer of their happiness, the obstacle to their progress, the cause—to sum up all charges—of the terrible but necessary evil of War (g).

“Fundamentum justitiae est fides, i.e. dictorum conventorum constantia et veritas” (h). To this remark of Cicero may be added the maxim which Ulpian puts in the form of a question: “Quid tam congruum fidei humane quam quae inter eos placuerunt servare?”

A Christian State, even in A.D. 1871, might be edified by the preamble to the Treaty between Nadir Shah the Emperor of Persia, and the Sultan Mahmoud, Emperor of the Turks, in 1747. “Glory be to God” (it begins), “who among other things has rooted out all hatred and enmity from the bosoms of these nations, and has commanded them to keep their Treaties inviolable, as the ever-glorious Book saith: “O ye who believe, keep your covenants” (i).

XLV. Different writers have adopted different arrangements of this part of International Jurisprudence as to the merits of which it might be difficult to decide. Perhaps the following preliminary considerations may contribute to a clear conception of the subject.

Treaties may be considered—

First, as to their subject, e.g. whether they relate to a matter of Natural Right, which, like a declaratory enactment, only adds another sanction to existing Law; or whether they confine some obligation as to what was previously optional or indifferent, as the abandonment of a right, the concession of a privilege, or the imposition of a servitus (k).

(g) Vattel, l. ii. c. xv. passim, s. 220. “La foi des traités, cette volonté ferme et sincère, cette constance invariable à remplir ces engagements, dont on fait la déclaration dans un traité, est donc saine et sacrée entre les nations, dont elle assure le salut et le repos: et si les peuples ne veulent pas se manquer à eux-mêmes, l’insécurité doit être le partage de quiconque viole sa foi.” Klüber, s. 145.

(h) Cic. De Offic. i. 7.

(i) Wenck, pp. 305-6.

Secondly, with respect to their *object*, whether it be of a permanent or transitory character, whether it relate exclusively to the contracting parties, or have for its object to *guarantee* the safety of possessions of a Third Power. Treaties of guarantee deserve a special consideration.

Thirdly, with respect to the *contracting parties*, e.g. whether they be both Christian, or whether they be Christian on the one side and Heathen or Infidel on the other, or whether they be Christian on the one side and on the other Mahometan, and whether within or without Europe (l).

Fourthly, with respect to the *period of time* in which they were contracted; that is to say—

1. Whether they were contracted before or after the *Treaty of Westphalia*, 1648 (m). This was the first fundamental pact of Europe which struck at the root of the foreign temporal authority of the Pope,—the last relics of which disappeared from the code of International Law when this great statute was engrafted on it, and introduced, within certain limitations, the principle of intervention on the ground of religion. This Treaty recognised as its foundation that the Balance of Power was necessary for the safety of nations, and though the equilibrium effected by it related chiefly, if not exclusively, to the German nations of Europe, it gave stability to many principles of International Law, and a consistent form to what was at that time a great ingredient of the liberties of Europe, the confederation of the German States; and lastly, this Treaty formed the basis of many succeeding Conventions, which, without a reference to it, would be unintelligible (n).

(l) See Hertslet's Commercial Treaties for a variety of Treaties between Christian Powers and African Princes.


(n) "Denique per hanc pacem (Westphalicam) suscitatum est *Jus illud Gentium*, quod recentiori estate enatum, hodieque etiam bello ac pace magna auctoritate floret, recte agentibus aliorum amicitiam ac societatem conciliat, legum violatoribus communem gentium indignationem ac bella parit."—Klünkhamer, *De bello propter successionem Regni Hispanici gesto Pace Rheno-Trajectinâ composito*, 1829: Amstelodami.
2. Whether before or after the Treaty of Utrecht (1713), which again affirmed the principle of the Balance of Power as a necessary safeguard for the liberties of nations, and which laid down as an inevitable consequence the two propositions, that the Crown of Spain should not be worn by the sovereign of another European territory, and that the Low Countries should not be added to the compact and magnificent domain of France.

3. Whether before or after the period intervening between the Treaty of Utrecht (1713) and the breaking out of the French Revolution (1791), during which Prussia and Russia had entered as new elements into the European system, and a new power in another hemisphere, the United States of North America, had taken its place in the community of States, and not a little affected their International relations for all time to come.

4. Whether it be during the twenty-five years' war of the French Revolution, and before the last great adjustment of the European system, the Treaty of Vienna (1815).

5. Whether it be between that period and the present time—which embraces a long period of International peace, since 1854 unhappily interrupted by wars, the end and the consequences of which, especially the last, no political sagacity can clearly foresee. During this latter period, many Republics in Central and Southern America, as well as Belgium and Greece in Europe, have become members of the great community of States; during this period European Turkey has been recognised as being, and has claimed to be entitled to the rights, and bound by the obligations incident to members not only of the general, but of the European community of nations (o); during this period the barrier which shut out China and Japan from the commerce of the western hemisphere has been broken down (p); during this period France has lost not the least

(o) Vide ante, vol. i. p. 89, and Appendix, p. 613.
valuable portion of her territory, and Prussia has been permitted to assume dimensions which have altered the balance of power in Europe.

XLVI. There are, moreover, certain International engagements which are not, strictly speaking, Treaties,—which cannot be considered as *pacta publica* (q). Such are contracts between the State and private individuals of another country, contracts relating to the private affairs of the Sovereign: even, generally speaking, marriages of the royal family belong to the *jus privatum* (r), and do not rise to the dignity of *faedera* (s).

XLVII. Treaties are also to be considered with reference to their *occasion* and *object*. They may, it is obvious, contemplate a perpetual duration and a permanent object, or be contracted for a definite period and a transitory purpose (*accords, conventions, factions*); they may have reference to the contracting parties only, or they may concern a third party, on whose behalf, or with respect to whom, other parties are to enter into obligations. This class of cases belongs to the difficult category of *guaranteeship*, which must receive hereafter a closer examination and fuller discussion.

XLVIII. The first point to be considered is, who are competent to contract a Treaty? This competence is possessed by all independent kingdoms.

A protected State may, if it has retained its sovereignty,

---

(q) "Conventionum autem tres sunt species; aut enim ex publica causa sunt, aut ex privata, privata aut legitima, aut juris gentium. *Publica conventio* est, quae fit per pacem, quoties inter se duces belli quaedam paciscuntur."—Dig. ii. t. xiv. 5.

(r) *Grotius*, ii. c. 15. s. 1. "*Publicas ergo conventiones eas intelligit, quae nisi juve imperii majoris aut minoris fieri nequeunt, qua nota differunt non tantum a contractibus privatorum, sed et a contractibus regum circa negotia privata.*"

(s) *Vattel*, i. ii. c. xii. s. 152. "Un traité, en latin *foedus*, est un pacte fait en vue du bien public par des puissances supérieures, soit à perpétuité, soit pour un temps considérable."

*Klüber*, s. 141.
make Treaties and Alliances, unless the power has been expressly renounced, or cannot be exercised consistently with the conditions of its protection (t). We have seen that States under a Federal Union may or may not, according to the terms of their confederation, be competent to enter into Treaties with foreign nations (u).

The question as to the proper organ for transacting negotiations and concluding Treaties between States, will be considered at length in a subsequent Chapter upon Embassies. It is sufficient to mention in this place that the valid execution of Treaties requires the agency of a representative of a State,—they must be contracted either immediately with the Sovereign Power of another State, or with a Plenipotentiary duly commissioned as the constitutional forms of the State may prescribe (x).

It was once a matter of serious doubt and discussion whether one nation could enter into Treaties with another which professed a different religion. Not only the earlier writers upon International Law, but Grotius himself debates this question at considerable length; and even the further question, whether a League and a War of Christian nations against the Infidels be not a matter of Christian duty (y). There was a period when the state of religious feeling and party (z), and still more when the actual and continued enmity between the Christian and the Mahometan, rendered this discussion neither unnecessary nor unprofitable (a). The conclusion of Grotius is in favour of the lawfulness of such Treaties (b).

Vattel, l. ii. c. xii. s. 155.
Klüber, s. 141.
(u) Vide ante, vol. i. pp. 133, 134.
(x) Vattel, l. ii. c. xii. s. 156.
Klüber, s. 142.
(y) L. ii. c. xv. 8, 9, 10, 11, 12.; c. xx. 48.
(z) A great attempt was made in Russia and Greece to rekindle this spirit during the war in 1854 between Russia and Turkey.
(a) The Le Louis, 2 Dodson's Ad. Rep., p. 244.
(b) "De foederibus frequens est questio, licitene in cantur cum his qui
TREATIES — WHO MAY CONTRACT.

71

No subordinate corporations in a State can be contracting parties to a Treaty with a Foreign State (c). A Sovereign may in his private capacity enter into contracts with Foreign Powers; but these are not Treaties properly so called.

XLIX. Secondly, the free reciprocal consent of both contracting parties, which is indispensable to the validity of a contract between individuals, is equally requisite for a Treaty between States (d). Mere negotiations, preparatory communications, are in their nature not of a binding character. Consent must not have been given in error or produced by deceit, either by misrepresentation (suggestio falsi) or by concealment of important facts (suppressio veri).

The analogy, however, between the Private Contract and the Public Treaty must not be pushed beyond what the reason of the thing may warrant. For instance, all contracts which have been the result of force or menace may be set aside; but the same observation cannot, without great limitations, be applied to Treaties. All Treaties which terminate a war frequently are, or may be, in a great measure, the effect of the force exerted by the victor over the vanquished—or may be the result of a menace of the more powerful to the weaker State. But Treaties concluded in consequence of these circumstances cannot be held null and invalid (e).

If there be any analogy in this respect to the Private Contract, it is rather to that maxim of equity, which considers a contract entered into to avoid or to stop litigation binding

a vera religione alieni sunt: que res in jure naturæ dubitationem non habet. Nam id jus ita omnibus omnibus hominibus commune est, ut Religionis discrimen non admittat."—L. ii. c. xv. 8.


"La loi naturelle seule régit les traités des nations; la différence de religion y est absolument étrangère."—Vattel, l. ii. c. xii. s. 162.


(c) Vide ante, vol. i. pp. 166, 167.

(d) Vattel, l. ii. c. xii. ss. 157–8–9.

Ktüber, s. 143.

(e) Grotius, l. ii. c. xvii. ss. 18, 10.
upon the party who entered into it, though induced to do so by apprehension of the delay, expense, and uncertain event of a law-suit. War, it must be remembered, is the terrible litigation of nations (f). Moreover, all civilised countries admit into their systems of private jurisprudence the axiom “expedit reipublicæ ut sit finis liitum” (g): the axiom is equally applicable to the great Republic of Nations; and it is manifest that, if the obligations of Treaties could be avoided upon the plea, that one of the contracting parties had consented through motives of fear, or under the influence of superior force, the faith of Treaties—the great moral tie which binds together the different nations of the globe—would be rent asunder. This observation of course does not apply to a case, which now rarely happens, of personal fear or actual violence operating upon the representative of the State who signed the Treaty. Both the rule and the exception, however, may be illustrated by events of recent history. The resignation of his crown and kingdom, extorted by Napoleon from Ferdinand VII. at Bayonne, whither he had decoyed that monarch and his family, was clearly—the duress and condition of the party abdicating being considered—invalid; but the resignation of Napoleon at Fontainebleau was not extorted by treachery or duress, but was the consequence of defeat in open legitimate war (h).

Private contracts may be set aside on the ground of the inferences of fraud and unfair dealing arising from their manifest injustice and want of mutual advantage. But no inequality of advantage, no lésion, can invalidate a Treaty. It is truly said by Vättel, “Si l'on pouvait revenir d’un “Traité, parce qu’on s’y trouverait lésé, il n'y aurait rien de stable dans les contrats des nations” (i). No more

(f) Schmalz, Europ. Völkerrecht, 54.
(g) Vide ante, vol. i. p. 293.
(h) Schmalz, pp. 53, 54. See also vol. i. p. 173.
(i) L. ii. c. xii. s. 158.
dangerous attempt has ever been made than that of Russia in 1870, to escape from the obligations of the Treaty of 1856 on this pretext. It is for the historian to dwell upon the hardship inflicted by this Treaty upon Russia, and upon the time which she chose for this repudiation of it, and upon the question of the innocence or complicity of Prussia.

The International writer may point with at least some satisfaction to the indignant refusal of all the other Powers to admit the plea of Russia, and to the Protocol which preceded the new Treaty of 1871.

A Conference was held in London in the early parts of this year to consider the Treaty of 1856.

Earl Granville, President of the Conference, said:—

"The Conference has been accepted by all the co-signatory Powers of the Treaty of 1856, for the purpose of examining without any foregone conclusion, and of discussing with perfect freedom the proposals which Russia desires to make to us with regard to the revision which she asks of the stipulations of the said Treaty relative to the neutralisation of the Black Sea.

"This unanimity furnishes a striking proof that the Powers recognise that it is an essential principle of the law of nations that none of them can liberate itself from the engagements of a Treaty, nor modify the stipulations thereof, unless with the consent of the contracting parties by means of an amicable understanding.

"This important principle appears to me to meet with general acceptance, and I have the honour to propose to you, gentlemen, to sign a Protocol ad hoc."

The Protocol in question is then submitted to the Conference and signed by all the Plenipotentiaries (k), that is to say, Prussia or North Germany, Austria, Great Britain, Italy, Russia, Turkey, and by subsequent adoption, France. All subscribed to the maintenance of this primary and

(k) Protocols of Conferences holden in London respecting the Treaty of March 30, 1856; Papers presented to Parliament, 1871.
elementary principle of International Law; and in the circumstances such subscription was most valuable to the welfare of States; but alas! that in the year of our Lord 1871 it should have been requisite! (l).

The consent must be reciprocal; therefore the engagement of one party must be accepted by the other, though the particular epoch and the precise form, unless they happen to be matter of express covenant in the Treaty itself, are unimportant. The acceptance of one party may precede or follow the engagement of the other, though in the interval it is competent to the former to retract its consent.

L. The consent may be signified in various ways (m). Some jurists have asserted that the declaration of consent must be specified in writing (n); but, though this be the usual and the most convenient mode, it cannot be said to be indispensable to the validity of the Treaty.

But the declaration, whether written or oral, must be positive and clear. Mere suppositions and conjectures raise, at the utmost, a probability, but can constitute no certain fact between nations. The consensus fictus of Civil Law is unknown to International Jurisprudence.

But the consent may be expressed in an instrument either drawn up in common by the parties to it, or signed separately by them, by an edict, an order, an ordinance, or letters patent addressed, in virtue of the Convention, to the subjects of either State (o).

LI. What may be the lawful subject of a Treaty, is best

(l) It is of course a wholly different consideration whether the original treaty was just or wise. It may fairly be said to have been neither.

(m) Klüber, ss. 141-143.

(n) P. J. Neyron, De ei fröderum (Göttingen 1798), iv. s. 23.

Schmaltz, Europ. Völkerrecht, s. 52. "Es scheint mir nicht mit Unrecht behauptet, das unter den europäischen Mächten nur schriftliche Verträge und schriftliche Genehmigungen als verbindend würden."

(o) See Treaty of Commerce between Austria and Russia, 1785.

De Martens, 620-632.
shown by the negative statement of what is excluded from this category (p).

First, it is obvious that a Treaty cannot contain engagements inconsistent with those already entered into with other States (q).

Secondly, a Treaty may not contain an engagement to do or allow that which is contrary to morality and justice (r): it contains a morally impossible condition, which Governments, the representatives of the justice, the morality, and the religion of their people, are not entitled to contract for—it is beyond the sphere of their agency (s).

Thirdly, it may be invalid upon the ground of physical impossibility existing at the time, or supervening from later circumstances (t).

LII. Various means have been resorted to, at various times, by various nations, to secure the sanctity and inviolability of International covenants; before we consider them, it should be observed, that though it is now usual to reserve the final settlement of a Treaty negotiated by ambassadors for the Ratification of the Governments whom they represent (u), yet that if the negotiator be a Plenipotentiary, such Ratification cannot be held essential to the validity of the Treaty (x), unless the necessity for it has been expressly

(p) Vattel, i. ii. c. xii. ss. 160, &c.
(q) Hoffman, ubi supr.
(r) "Par la même raison, par le défaut de pouvoir, un traité fait pour cause injuste ou déshonnête est absolument nul, personne ne pouvant s'engager à faire des choses contraires à la loi naturelle."—Vattel, ib. s. 161.
(s) "Nie kann ein völkerrechtlicher Vertrag Staaten oder Souveräne als die Repräsentanten und Träger des Rechts und der Sittlichkeit, worin auch die religiösen Interessen eingeschlossen sind, verpflichten."

Heffters, 94.

 Vide ante, vol. i. pp. 26, 27.
(t) Ib. p. 42.
(u) A Treaty is not usually laid before the British Parliament until it be ratified.—See Lord Clarendon's remarks in the House of Lords as to the Treaty between Austria and the Porte, July 24, 1853. See also debate in May 22, 1871, on the Treaty with the United States.
(x) Klüber, s. 142.
reserved in the powers given to the ambassador, or unless, as usually happens, it be the subject of stipulation in the Treaty itself (y).

LIII. Sometimes Treaties have received Confirmation (confirmation, Bestätigung) when, for some reason or other, doubts have arisen as to their validity or as to their duration. The clause so common in Treaties, "that the former Treaty " shall be considered as if it were part and parcel of the present Treaty, and as if it had been inserted (z) word for "word," does not, according to the opinion of Klüber (a) necessarily imply that the whole of the former is incorporated in the present Treaty; that is to say, it does not necessarily, according to this author, bind the Guarantees of the new Treaty to the fulfilment of the provision of the old Treaty; though it does so bind the original contracting parties to the first as well as to the second Treaty. Thus if this author's opinion be correct, the Guarantee of Russia did not extend to the Treaty of Westphalia, when, in 1799, she became a Guarantee for the Treaty of Teschen, which referred among others to the Treaty of Westphalia; though the reference bound other powers who had been contracting parties to both Treaties.

Sovereigns have sometimes, on their accession to the throne, formally announced their adhesion to existing Treaties,

(y) "Sed et per hominem alterum obligamur, si constet de voluntate nostra qua illum elegerimus, ut instrumentum nostrum ad hoc specialis, aut sub generali notione," &c.—Grot. l. ii. c. xi. 12.

"Les souverains traitent ensemble par le ministre de leurs procureurs ou mandataires, revêtus de pouvoirs suffisants, que l'on appelle communément plénipotentiaires. On peut appliquer ici toutes les règles du droit naturel sur les choses qui se font par commission, &c., tout ce qu'il promet dans les termes de sa commission, et suivant l'étendue de ses pouvoirs, lie son constituant. Aujourd'hui, pour éviter tout danger et toute difficulté, les princes se réservent de ratifier ce qui a été conclu en nom par leurs ministres," &c.—Vattel, l. ii. c. xii. s. 156.

(z) E. g. The Treaty of Teschen, 1779, so incorporated the Treaties of Westphalia, Breslau, Berlin, Dresden, Paris, and Hubertsbourg.

(a) Klüber, s. 153.

(b) Vide post, "GUARANTEE."
but by this act, they have in reality conferred no additional validity upon engagements which were binding upon them before, and which they were compellable to execute (c).

Treaties receive sometimes a renewal (d) (renovatio pactorum, renouvellement, Erneuerung) or prorogation after the term for which they have been contracted has expired, and sometimes a complete re-establishment (restitutio, rétablissement, Wiederherstellung) when they have altogether ceased to be in force from the intervention of War (e)—a cause which will be considered hereafter—or from some other cause. These cases, however, are rather cases of restoration than of confirmation.

LIV. Among the means which have been resorted to for securing the performance of Treaties are to be enumerated,

1. Oaths (f).
2. Hostages.
3. Pledges.

a. Consisting of offering persons as sureties.

β. Choosing Third Powers as Guardians of the Treaty.

The confirmation by oath of the contracting parties was adopted in the Treaty of Madrid, in 1526, between Francis I. and Charles V.; at the Peace of Cambrai, in 1529 (g); of Chateau Cambresis, in 1559 (h); at the famous Peace of Munster between Spain and her revolted Dutch colonies in 1648; at the peace of the Pyrenees in 1659 (i); at the

(c) Vide ante, vol. i. p. 171.
(d) E. g. Treaties of Subsidy. See Vattel, 1. ii. c. xiii. s. 199.
(e) Vol. iii. ch. 2.
(f) "Apud omnes populos et ab omni sævo circa polllicitationes promissa et contractus maxima semper vis fuit jurisjurandi."—Grot. 1. ii. c. xiii. 1.
(g) Article 46.
(h) Article 24.
(i) Article 124. Schmauss, 709.—"Solemniter tacta cruce, sanctis Evangeliiis, canonibus Missæ, et per honorem suum jurabunt observatum se et impleturum plene, realiter et bonâ fide, omnìn in articulis præsentis Tractatus contenta."
peace of Aix-la-Chapelle between France and Spain in 1668; at the peace of Ryswick in 1697 (k). The most modern example is the alliance formed between France and Switzerland in 1777, and solemnly confirmed by the oath of the contracting parties in the Cathedral of Soleure.

The oath, now discontinued in practice, was not always a very binding confirmation, for there are various instances of Roman Catholic Princes being absolved by the Pope from the obligations of it. Ferdinand, called par excellence the Catholic, was so released by Pope Julius II. (l); Francis I. by Leo X. and Clement VII.; Henry II. of France by the Papal Legate Caraffa (m). This abuse gave rise to a clause not unusual in Treaties and other public documents, to the effect that the contracting party would not attempt to obtain a release from his oath either personally or through the agency of any other person, and that he would not accept such dispensation if offered to him (n).

LV. (o) Hostages (obsides, étages, Geissel) were formerly required and given as pledges for the performance of the conditions of a Treaty. As late as the peace of Aix-la-Chapelle in 1748, Hostages were stipulated for (p). It is a clear proposition of International Law that any proceeding of rigour against a Hostage, even if he be forcibly seized

---

(k) Article 38.
(l) Rousset, Supplément, T. iii. P. i. p. 17.
(m) Vattel, i. ii. c. xv. s. 223.
(n) E. g. "Diploma cessionis monarchiae Hispanice," A.D. 1703, Schmauss, 1163.—“Jureque jurando corporaliter præstito fidem nostram quam solemniter adstrinximus, nullo unquam tempore aut modo a nobis aut alis infringendum omni quorumlibet qualiumque contradictione, exceptione generali ac speciali restitutione, dispensatione ac absolutione, etiam Pontifici, alisque beneficiis Legis seu Consuetudinis aut nominis perpetuo exclusis.”
(o) Klüber, s. 156.
(p) "Sa Majesté Britannique s’engage aussi de son côté à faire passer auprès du Roy très-Christien, aussitôt après les ratifications du présent Traité, deux personnes de rang et de considération, qui y demeureront en otage jusques à ce qu’on y ait appris d’une façon certaine et authentique, la restitution de l’isle Royale," &c.—Wench, ii. 352 &c.
in time of war, beyond what may be necessary for the security of his person, is illegal.

If the giver of the Hostage fail in fulfilling his pledge, it is lawful for the receiver to retain the hostage; but wholly unlawful, as the practice once was, to put him to death (q). If the hostage die, the giver is not, except in the case of an express stipulation, bound to replace him. The receiver has been contented with the surety, of the nature of which he was aware (r) at the time of accepting it.

A more common and as it should seem a better pledge, is the retention of a place or fort until such time as the condition of the Treaty be fulfilled. This pledge or *pawned thing* may be what is legally called moveable property (*donner des gages*). Poland once placed her Crown Jewels in the hand of Prussia. Or the pledge may consist of immoveable property (*donner en engagement*): they may not be actually placed in the possession of the creditor State, but assigned over by some instrument without actual delivery, which *hypothecates* them; but this is an unusual transaction between States.

The State which holds the pledge is bound to preserve it in good condition, but may, if the stipulated time elapse without the payment of the debt or the fulfilment of the condition, appropriate it. The House of Savoy hypothecated the *Pays de Vaud* to the Cantons of Berne and Freybourg, and on non-payment of the debt they forcibly seized and retained the territory (s).

Having disposed of that species of *guarantee* which relates to hostages, pledges, and hypothecations, we have now to consider that kind of security which is more usually comprised under the term *Guarantee*.

---

(q) Vattel, l. ii. c. xvi. ss. 245–61.
(r) Ib. s. 255.
(s) Günther, ii. 154.
Vattel, l. ii. c. xvi. ss. 241–244.
Kliüber, s. 156.
CHAPTER VII.

TREATIES—GUARANTEE.

LVI. (a) Treaties may concern not only the contracting parties (b), but third parties who may or may not be literally contracting parties in the first instance, but the protection of whose interests, or the maintenance of whose (c) status, may be the object of the Treaty. The consideration of such Treaties brings us to the very delicate question of Guarantee.

The following heads appear to comprise the principal classes of Guarantee (d):

1. A Guarantee that a nation shall maintain a particular status towards all other powers, e.g. of neutrality, which is a condition of the newly erected kingdom of Belgium (e).

(a) Deutsches Staats- und Bundesrecht von Zachariä, i. 129–137, should be consulted for the Guarantee of the former German Confederation, both from within and without. See, too, Schmauss, Corp. Jur. Publ. 1079.

(b) By the Treaty of Aix-la-Chapelle (1748), the eight contracting parties mutually guaranteed each other’s dominions.

(c) Vide ante, vol. i. p. 147.—Intervention as to incorporation of Italian States of Austria in the German Confederation without consent of the Powers who signed the Treaty of Vienna.

(d) See the remarkable modern instances of Belgium and Greece, vol. i. pp. 111, 117.

(e) Vide ante, vol. i. p. 114.

Vattel and other writers make a distinction between caution (Surety) and garant (Guarantee). In the former case, the surety must make good the default of the principal; in the latter the guarantee is only bound to do his utmost to obtain the performance of the principal. It would manifestly require an express provision to constitute the Guarantee of a Treaty a Surety in this sense for the performance of its conditions. The distinction, therefore, is not taken in the text of this work.
2. A Guarantee that a particular State shall do a particular act, e.g., discharge a debt, or resign a territory.

3. A Guarantee to defend the particular constitution or territory, or particular rights, of a country, contra quos-cunque (f).

4. A Guarantee to defend the particular constitution of a State generally against all attacks which may assail it, whether Foreign and External or Domestic and Internal.

Such a Guarantee, being an engagement which binds a foreign power to take part in the civil quarrels of an Independent State, appears to be in theory not consistent with the perfect and uncontrolled freedom which is of the essence of such a State, and in practice to have proved too often fatal to her liberties and to her very existence.

Having regard, however, to the Treaties of Guarantee relating to the Protestant Succession in England, which will be presently mentioned, it seems impossible to deny, that such a Right of Intervention (g) has been, and may be conceded by one nation to another, without entailing the loss of legal personality in the nation which concedes it—without reducing that nation to the status already discussed (h), of a State so protected as to be dependent.

This is a construction of Guaranteeship opposed certainly to every presumption of public law, and one which can only be created—if, according to modern practice and usage, it can be created at all—by express words. Such a Treaty is fraught with mischief to the best interests both of Public and International Law.

The constitutions of the greatest as well as of the smallest States, have been at different periods of history the subject of Guarantees, especially against any invasion from

---

(f) Vide post, construction of this term.
(g) It is, perhaps, partly to be inferred from the careful and express renunciation of any such right on the part of the Powers who guaranteed the kingdom of Belgium. Vide post, p. 78.
(h) Vide ante, vol. i. pp. 97, 99.

VOL. II.
Third (i) Powers, and perhaps in some cases the terms have not extended the principle of intervention beyond this limit.

The British, the Austrian, the Spanish Empires, as well as the States of Poland, Geneva, and of minor German principalities, have been all examples of the application of this principle.

LVII. At the peace of Westphalia, 1648, France and Sweden, as well as the various principalities which composed the German Empire, became Guarantees for that first great settlement of Europe, from which a considerable portion of Modern International Law derives its origin. Guarantee-ship of this kind was then a device of comparatively recent date for securing fidelity to International engagements, having succeeded to the more feudal and coarser expedient of appointing Neutral Princes and Free Towns Conservatores of Treaties.

The Guarantee undertaken by France and Sweden, at this Treaty, would seem to have necessitated their intervention in the internal affairs of another nation; for the obligation imposed upon all the "contractans et garans," as they were called, is set forth in the 116th Article of the part of the Treaty, signed at Munster, and in the 17th Article of the part signed at Osnaburgh is thus expressed: "Que tous ceux qui ont part à cette transaction soient obligés de défendre et protéger, tous et chacun, les lois ou conditions de cette paix (k), contre qui que ce soit, sans distinction de religion; et s'il arrive

(i) Vattel, l. ii. c. xvi. ss. 235–239.
Klüber, ss. 157–8.
Wheaton, pt. iii. c. ii. 12.

(k) This is a clause usually termed "contra quoscunque." Dr. Twiss (Duchies of Schleswig and Holstein, pp. 124–5) observes: "No rule of International Law is more clear than that the convention of guaranty does not apply to the case of political changes. If, for instance, Denmark had guaranteed to the Princess Anne of England the undisturbed possession of the British throne upon the death of William III. contra quoscunque, no casus fæderis would have arisen if the Highlanders of Scotland had attempted to restore the Crown to the son of James II.; but if Louis XIV. or Philip V., as Foreign Powers, had sent an army
"que quelque point en soit violé, l’offensé tâchera première-
ment de détourner l’offensant de la voie de fait, en soumet-
tant la cause à une composition amiable, ou aux procédures
ordinaires de la justice; et si, dans l’espace de trois ans,
le différend ne peut être terminé par l’un ou l’autre de ces
moyens, que tous et chacun des intéressés en cette transac-
tion soient tenus de se joindre à la partie lésée, et de l’aider
de leurs conseils et de leurs forces à repousser l’injure,
après que l’offensé leur aura fait entendre que les voies de
douceur et de justice n’ont servi de rien; sans préjudice
toutefois au reste de la juridiction d’un chacun, et de l’ad-
ministration compétente de la justice, suivant les lois et
constitutions de chaque prince et état" (l).

In the Treaty of Hanover, concluded in 1725 between
Great Britain and Prussia, this Guarantee is expressly
recited and confirmed (m); and in 1792, the first inter-
vention of Austria and Prussia (n), in the war of the French
Revolution, was founded upon the obligations contracted by
these States in 1648, at the time when France obtained the
sovereignty of Alsatia; the German Sovereigns were in-
voked in 1792, as the guarantees of the Treaty of Westphalia,
to protect the private property and rights of jurisdiction of
the minor German princes in Alsatia. Upon this Treaty
also, Russia has more than once rested her claim to interfere
in the arrangements of the German constitution (o).

to co-operate with the insurgents in depriving the Princess Anne of the
succession, there would have been at once an undeniable casus foederis.
Even an expression so indefinite as contra quoscunque is limited by the
nature of the subject-matter; it may apply to the slightest international
interruption, from whatever quarter it may be threatened; but even a
Civil War will not extend its operation to political troubles."—Sed vide
post, pp. 75, 6, 7; and see Vattel, l. ii. c. xiii. s. 197. "On doit sans doute
defendre son allié contre toute invasion, contre toute violence étrangère,
et même contre des sujets rebelles."

(m) Schmauss, 2014.
(n) De Martens, 2. i. viii. s. 338, and note (n).
(o) Wheaton’s Hist. 346, and 350.
LVIII. The Treaty of Teschen in 1779 closed the war which had broken out in 1777 with respect to the succession to the kingdom of Bavaria, and renewed by its 12th Article the Treaty of Westphalia. This Treaty of Teschen was concluded under the mediation, specially invoked by the contending parties, of France and Russia, and by the 16th Article of it these mediatorial Powers were constituted Guarantors of its provisions; one of which, as has been stated, was the renewal of the Treaty of Westphalia.

LIX. By the 12th Article of the Treaty of Vienna, concluded between Austria and Spain in 1725, the latter country bound herself to guarantee the order of succession in Austria commonly called the Pragmatic SANCTION, *guarantigiare quoque spondet eum succedendi ordinem, quem sua Majestas Cæsarea, &c., declaravit et stabilivit (p).* France bound herself to the same Guarantee by the 10th Article of the Treaty of Vienna, 1738. Austria, on the other hand, reciprocally guaranteed the Order of Succession to the throne of Spain, in the same Article of the same Treaty of Vienna, 1725. Prussia also, under Frederick William I., guaranteed her Pragmatic SANCTION. The result tends to justify the remark of Frederick the Great, that Guarantors

*(p) "Sua Majestas Cæsarea adpromittiit, ordinem succedendi in regno Hispanicæ receptum, atque per tractatum Trajectensem, per renunciationes, item vi quadruplicéis fœderis subsecutas, nec non per presens pacis instrumentum confirmatum, tueri se, guarantiamque desuper præstare, et quoties opus, manutenere velle; vicissim Rex Hispanicæ tueri, et guarantigiare quoque spondet, eum succedendi ordinem, quem sua Majestas Cæsarea ad mentem majorum suorum in serenissima sua domo ex pactis ejusdem antiquis, in forma perpetua, indivisibilis, ac insepulturam fidei-commissi primogenitura affecti pro universis sue Majestatis utiusque sexus Hæreditibus et successoribus declaravit et stabilivit, quique subinde ab ordinibus et statibus universorum Regnorum, Archiducatum, Ducatum, Principatum, Provinciarum, ac ditionum, ad serenissimam dominum Austriacam jure hæreditario spectantium, communi omnium voto susceptus, ac grato submissuque animo agnitus, atque in vim legis sanctionisque præmatice perpetuo valiture in publica monumenta relatus fuit."—Schmauss, t. i. 1936-7.*
were like filigree work, better to look at than to use (q). Scarcely had the Emperor Charles VI. closed his eyes in death, before the vanity of his elaborate attempts to engage all nations to secure to his daughter, Maria Theresa, the undivided inheritance of her father, was fully manifested. Every one of these nations, upon the most frivolous pretexts, disowned the obligations of the solemn Treaty by which they had bound themselves (r).

The character of the Guaranteeship undertaken by the great European Powers with reference to the Duchies which form an integral part of the Crown of Denmark, underwent much discussion at a recent period. These Treaties were—

1. The Treaty containing the British Guarantee, 1720.
2. The Treaty containing the French Guarantee, 1720.
3. The Treaty of Copenhagen, 1727.
4. The Treaty containing the German and Russian Guarantee, 1732 (s).

LX. When the Parliament of the British Empire had settled the succession to the throne, after the death of Queen Anne, upon the Princess Sophia, Electress and Duchess Dowager of Hanover (the granddaughter of James I.), and upon her issue, with the condition that they should be members of the Church of England, the Government were unhappily not content with this domestic pledge for the security of the liberties of their country, but insisted on its receiving the Guarantee of the Powers, who became contracting parties to many of the Treaties which were entered into from the year 1713 to the Peace of Aix-la-Chapelle in 1748: and such a Guarantee was accordingly rendered by France, Austria, Spain, and especially by Holland, in the Treaty of 1713, called the Treaty "of the Guarantee of the

(q) "Toutes les garanties de mon temps sont comme l'ouvrage de filigrane, plus propre à satisfaire les yeux qu'à être de quelque utilité."—Histoire de mon Temps (Œuvres posthumes), t. i. c. ix. p. 229, cited by De Martens, l. ii. c. ii. s. 63, n. b.
(s) Twiss, Duchies of Schleswig and Holstein, pp. 120-151.
"Protestant Succession and of the Dutch Barrier," in the second article of which the statute of William III. is recited (t).

LXI. It may be well to cite in this place the opinions of two eminent persons, both with no mean pretensions to be heard upon any question of International Jurisprudence, upon the conduct of Great Britain in this respect.

The Abbé de Mably remarks (u):

"Il est surprenant que dans le moment que les Anglois changent leurs loix de succession, qu'ils excluent les Stuarts du trône, et qu'ils sentent l'avantage de soumettre le Prince à la nation; ils se lient eux-mêmes les mains, en voulant que toute l'Europe s'engage à maintenir et à défendre les actes que leur Parlement a passés en faveur de la Maison de Hanovre. Cette conduite ne sembla pas prudente aux personnes qui sont instruites des loix, des principes, et des intérêts des Anglois. Ils devoient se borner à exiger de leurs voisins qu'ils ne se mêleroient en aucune façon de leur gouvernement; et qu'ils ne favoriseroient en aucune manière les personnes qui feroient des entreprises contraires aux actes du Parlement." Quite in accordance with this opinion is that of Mr. Jenkinson, afterwards Earl of Liverpool, expressed in his celebrated defence of the conduct of Great Britain, in 1758 (x):

"The second species of defensive alliance, which subsists between Great Britain and Holland, is that which was first agreed to, in the Treaty of Barrier and Succession of October 29, 1709; and again more particularly stipulated in another treaty, to the same purpose, of January 29, 1713. The design of this treaty is the guaranty of the Dutch barrier on the one part, and the guaranty

(t) St. 12 & 13 Wm. III. c. 2.
Schmauss, 1288.
(u) Droit Public, t. ii. p. 156.
"of the firmest barrier of British liberty—the Protestant succession—on the other. The stipulations are, 'that in case either should be attacked, the other should furnish, at the requisition of the party injured, but at his own expense, certain succours there expressed; and if the danger should be such as to require a greater force, that he shall be obliged to augment his succours, and ultimately to act with all his power in open war against the aggressor.' I pretend not to make any use of this Treaty in the present case, and only mention it to give a fuller view of the alliances which subsist between us. Here, however, I will indulge a wish that the case of this guaranty, as far as it relates to the rights of the Crown of Great Britain, may never again exist. I always read with sorrow that there ever was a time when the unfortunate dissensions of our people, in a point where the whole of their happiness was concerned, should have made it necessary to add any other sanction to our laws, or any other security to our constitutional rights, than such as our own power can afford them; these days, however, of shame now, I hope, are passed.

LXII. The doctrine and practice of Guaranteeship, in its proper sense, i.e. against third powers, has not expired with the last Treaty of Vienna; our own times furnish us with two instances, as memorable as any that preceded them, in the newly-created kingdoms of Greece and Belgium (y).

By the 4th article of the Treaty concluded at London in 1832 between France, Great Britain, Russia and Bavaria, it is provided "that Greece under the Sovereignty of Prince Otho and the Guarantee of the three Courts, shall form a "monarchical, independent State." The other conditions of the Treaty, especially the limitations which follow with respect to the future succession to the throne, and the condition that the crown of Greece shall never be worn by the

(y) Vide ante, vol. i. p. 111.
Sovereign of any other country, were of course equally under the Guarantee of these Powers (z).

LXIII. By the Treaties between Austria, France, Great Britain, Prussia, Russia, Holland and Belgium, signed at London on the 19th of April, 1839, it is declared that "La Belgique formera un état indépendant et perpétuellement neutre" Elle sera tenue d'observer cette neutralité envers "tous les autres états." From the period of the breaking out of the Revolution at Brussels in 1830 till this concluding Treaty, a variety of negotiations and a vast number of protocols passed between the Powers just mentioned, relative to the separation of Holland and Belgium; and on the 15th of November, 1831, a treaty was concluded which was in all its essential parts literally the same as that of 1839. All these negotiations and protocols, as well as the Treaties of 1839, show that the peculiar constitution of Belgium, as an independent but perpetually neutral state, is under the Guarantee of the Five great Powers, and the arrangements with respect to the Duchy of Luxemburg are also under the Guarantee of the Germanic Confederation.

It should be observed that during the progress of the negotiations respecting Belgium, the intention of future interference with the internal and domestic affairs of that kingdom was distinctly disclaimed by the Guarantees (a).

The further Treaties in 1870, of England, France and Prussia, for securing the independence of Belgium, were adverted to in the former volume (b).

(z) Ib. p. 117.
(a) See Letters of Austria, Russia, Prussia, and England, to France.—Papers laid before Parliament as to Belgium, p. 69.
(b) Vol. i. pp. 115-496. There was some debate on treaties of guarantees in the House of Lords, March 6, 1871.—Hansard, vol. cciv. pt. v.
CHAPTER VIII.

INTERPRETATION OF TREATIES (a).

LXIV. (b). All International Treaties are covenants bonae fidei, and are, therefore, to be equitably and not technically construed (c).

LXV. The imperfection of language as an instrument of expressing intention must occasionally, if there were no other reasons, render interpretation necessary (d).

(a) The authorities principally relied upon in this Chapter are—

INTERNATIONAL JURISTS.

Grotius, l. ii. c. xvi.

Puffendorf, l. v. c. xii.

Vattel, l. v. c. xii.

Rutherford, B. ii. c. vii.

COMMENTATORS ON THE ROMAN LAW.

ANCIENT.

Donellus de Jur. Civ. l. i. c. xv.

Pothier on Obligations, p. i. c. i. art. vii., translated and amplified by Evans, vol. i. p. 53; vol. ii. p. 35, number 5.

Domat. Prél. t. i. s. 2.; tr. ch. 12.

MODERN.

Savigny, R. R. i. Viertes Kapitel.

Mühlenbruch, Doctrina Pandect. i. ss. 58-65, s. 115.

PUBLICISTS.

Suarez, De Leg., &c. l. vi.

Story on the American Constitution, vol. i. c. v.

WRITERS ON ENGLISH LAW.

Broom's Legal Maxims, c. viii. The Interpretation of Deeds and Written Instruments.

Bacon (Matthew), Abridgement, tit. Statutes, i. Rules to be observed in the Construction of a Statute.

Wildman's International Law, i. pp. 177-185.

(b) Grot. l. ii. c. xvi. De Interpretatione.

(c) Ib. l. ii. c. xvi. 11. "Discrimen actuum bonae fidei et stricti juris, quatenus ex jure est Romano, ad jus gentium non pertinet."

Maltass v. Maltass, 1 Robertson's Reports, p. 76.

(d) "Sed quia interni actus per se spectabiles non sunt, et certi aliquid
But in truth there are other reasons; in all laws and in all conventions the language of the rule must be general, and the application of it particular. Moreover, cases arise which have, perhaps, not been foreseen, which may fall under the principle, but which are not provided for by the letter, of the law or contract. Circumstances may give rise to real or apparent contradictions in the different dispositions of the same instrument, or of another instrument, in pari materia, which may require to be reconciled. These are difficulties which may arise between contracting parties disposed to act honestly towards each other. But they may not be so disposed; one of them may endeavour to avoid his share of the mutual obligation. Indeed there is no need for à priori reasoning on a subject amply demonstrated, both in the covenants of individuals and the Treaties of States, to be a matter of practical necessity.

LXVI. The interpretation is the life of the dead letter; but what is meant by the term "interpretation?" The meaning which any party may choose to affix? or a meaning governed by settled rules (e) and fixed principles, originally deduced from right reason and rational equity, and subsequently formed into laws? Clearly the latter. The necessities of the great society of States as much demand such laws for the exposition of their Treaties, as the necessities of each individual State for the covenants of their subjects. The rules by which International covenants are interpreted, have been collected by jurists both from the Roman law itself, from commentators upon that law, and from the writings of International Jurists. Grotius, Puffendorf, Vattel, and Rutherford, have each written chapters upon this subject, which have obtained general approbation from the manifest equity

statuendum est, ne nulla sit obligatio, si quiscum sensum quem vellet sibi aspicienti liberare se posset; ipsa dictante naturali ratione jus est ei, cui quid promissum est, promissorem cogere ad id quod recta interpretatio suggerit, nam aliqui res exitum non reperiret: quod in moralibus pro impossibili habetur."—Grotius, l. ii. c. xvi. s. 1.

(e) Vattel, th. s. 265.
of the doctrines which they contain, and the clear manner in which they are expressed. But great advantage is to be derived from the writings of Suarez and Donellus, Pothier and Domat, who have treated the subject of the interpretation of laws and covenants in a manner, which combines the profoundest reasoning with the most perspicuous arrangement. The value of such writers, as expounders of International as well as of Public Law, has already been dwelt upon (f).

Sound principles upon this subject are moreover to be found scattered up and down the pages of the Roman Law, with respect to the interpretation of contracts (g), laws, and testaments. The Roman Lawyers were, indeed, apt to confound the limits of interpretation and of explanation by a new law, but they were careful not to apply to the Public Treaty (publica conventio) (h) the peculiarities attending the forms and rules of the private covenant (i). There is a manifest distinction between Laws, and Covenants or Treaties, which modifies in some degree the application of the rules of interpretation, transferred from the former to the latter. The Law enacted by the Supreme Power of the State

---

(f) Vol. i. p. 65.

(g) Savigny remarks (Obligationenrecht, II. 180), that with respect to contracts, these principles are of a very general character, and scarcely afford any aid beyond that which an intelligent and dispassionate consideration of each particular case would discover. This may be so; but the circumstance adds to their value as rules of Interpretation of Contracts between States having no common superior.—Vide ante, vol. i. c. ix.

(h) Dig. ii. 14, 5, De Pactis.

(i) Gaius, iii. s. 94. Having remarked that only Roman citizens could validly contract in the formula, "Spondes? Spondeo," continues, "Unde dicitur, uno casu hoc verbo peregrinum quoque obligari posse, velut si Imperator noster Principem alicujus peregrini populi de pace interroget: Pacem futuram spondes? vel ipse eodem modo interrogetur. Quod nimium subtuler dictum est: quia si quid adversus pactionem fiat non ex stipulatu agitur, sed iure belli res vindicatur." This passage is cited by Savigny, R. R. i. 310, n. c. It affords an additional proof that the Romans were not ignorant of International Law.—Vide ante, vol. i. Pref. p. xlvi.; p. 31, &c.; App. II.
is to be interpreted according to the intention of that one power. The Covenant or Treaty contracted by two or more parties is to be interpreted with reference to the intention of them all—"conventio seu pactio est duorum vel plurium in "idem placitum consensus" (k). It is proposed to give a concise statement of those leading principles and rules, which appear to be sanctioned by the reason of the thing, by usage, by the authority of jurists, and by the rules and analogies of the Roman Law (l), with respect to the interpretation of Treaties.

LXVII. The general heads under which, for the sake of perspicuity, we may range the principles and rules of Interpretation, are the following:—

a. **Authentic Interpretation**, that is, the exposition supplied by the Lawgiver himself (m).

β. **Usual Interpretation**, that which is founded upon usage and upon precedent.

γ. **Doctrinal Interpretation**; that which is founded upon a scientific exposition of the terms of the instrument, and which, according to many jurists, is the only interpretation properly so called. This again admits of a sub-division into, 1. Grammatical, and, 2. Logical exposition.

LXVIII. **Authentic Interpretation**, in its strict sense, means the exposition given by the Lawgiver himself; it is, therefore, strictly speaking, inapplicable to the case of Treaties; but a *contemporanea expositio* may be gathered from the acts of the parties which preceded, accompanied, and followed soon after the making of the Treaty. In truth, however, this kind of interpretation generally takes the form of a *new* law, reciting and removing the doubts of the old one; and this mode of interpretation may, of course, be

(k) Dig. ii. 14, I. 1.

Bowyer's Third Reading.


(m) Cod. i. 14, 12. "Tam conditor quam interpres legum solus Imperator juste existimabitur."
adopted in the case of Treaties. The contracting powers may promulgate a subsidiary and explanatory Treaty, the preamble of which, like the preamble of a Statute, may be declaratory with respect to existing doubts upon the construction of a former convention. But this is, in fact, not so much a particular mode of interpretation, as the enactment of a new law, or the conclusion of a new Treaty, as the case may be.

LXIX. *Usual Interpretation* is, in the case of Treaties, that meaning which the practice of nations has affixed to the use of certain expressions and phrases, or to the conclusions deducible from their omissions, whether they are or are not to be understood by necessary implication. A clear usage is the best of all interpreters between nations, as between individuals; and it is not legally competent to either nation or party to recede from its verdict (n).

LXX. *Doctrinal Interpretation* is, as has been said, either, 1. Grammatical or Philological; or, 2. Logical; and first,—

As to *Grammatical Interpretation*, we must not confound translation and etymology with interpretation. It has been well observed (o) that though it may not be easy to determine with exact precision where the province of the grammarian and the lexicographer ends and that of the interpreter begins, and though their provinces may be scarcely distinguishable upon their confines, yet that in their remotest extremities, and

---

(n) "Minime sunt mutanda, quae interpretationem certam semper habuerunt."—Dig. I. 3. 23.

"Si non apparent quid actum est: erit consequens ut id sequamur quod in regione in qua actum est frequentatur."—Ib. L. 17–34.

"In obscuris inspici solet, quod verisimilior est, aut quod plerumque fieri solet."—Ib. 114.

"Si de interpretatione legis quaeratur, in primis inspiciendum est quo jure civitas retro in ejusmodi casibus usa fuisse: optima enim est legum interpres consuetudo."—Ib. ii. 3, 37.

"Nam Imperator noster Severus rescrisit: in ambiguitatibus, quae ex legibus proficiscuntur, consuetudinem, aut rerum perpetuo similiter judicatarum autoritatem, vim legis obtinere debere."—Ib. 38.

(o) Rutherforth, b. 2, c. vii.
for practical purposes, they are sufficiently distinct. A competent knowledge of the language in which the covenant is written is, in fact, necessarily supposed to precede or accompany the work of interpretation; and with respect to etymological refinements, they can but rarely have any place in the legitimate construction of a law or contract; the meaning of the words employed by the lawgiver, or by the parties, is to be sought in the common usage and custom, which indicate the consent of those who use them, that they should bear a particular meaning. It certainly may happen, that the meaning affixed by contemporaneous use and practice, upon the particular words employed, may have undergone, through lapse of time and change of fashion, so much subsequent alteration, that the due construction of the instrument may require a knowledge of the antiquated as well as of the present use of the words, though such an instance would probably be of an exceptional character. There are, however, certain general rules of literal interpretation, which have been sanctioned by all jurists, and which should be mentioned in this place.

1. The principal rule has been already adverted to, namely, to follow the ordinary and usual acceptation, the plain and obvious meaning of the language employed. This rule is, in fact, inculcated as a cardinal maxim of interpretation equally by civilians, and by writers on International Law.

Vattel says that it is not allowable to interpret what has no need of interpretation. If the meaning be evident, and the conclusion not absurd, you have no right to look beyond or beneath it, to alter or add to it by conjecture. Wolff observes, that to do so is to remove all certainty from human transactions. To affix a particular sense, founded on etymo-

\(p\) Rutherforth, b. 2, cc. 7-9.

\(q\) "Standum omnino est iis, quae verbis expressis, quorum manifestus est significatus, indicata fuerunt, nisi omnem a negotiis humanis certitudinem removere volueris." — Jus Nat. part vii. n. 822.

"Non aliter a significatione verborum recedit oportet, quam cum manifestum est aliud sensisse testatorum." — Dig. xxxii. i. 69.

Upon this passage, Donellus remarks, "De testatore hoc scriptum est
logical or other reasons, upon an expression, in order to evade the obligation arising from the customary meaning, is a fraudulent subterfuge aggravating the guilt of the fœdiferous party, "fraus enim adstringit non dissolvit perjurium" (r). Vattel cites as instances of such conduct, the act of a Turkish Emperor, who having promised a man to spare his head, caused him to be cut in two, through the middle of the body; and the act of Tamerlane, in ordering the soldiers, whose blood he had promised not to shed, to be buried alive.

In such cases as these, the fraud is flagrant; but the principle, by which they are condemned, applies to all cases in which an attempt is made,

"To palter with us in a double sense,
"To keep the word of promise to our ear,
"And break it to our hope" (s).

2. The construction is to be derived from a due consideration of the language of the whole instrument, and not from that of particular portions or sentences (t) of it, or in the language of Donellus (u), "antecedentia ipsius legis et sequentia in "primis spectanda, ex his ambiguitas sæpe explicatur" (x).


"Verbum hoc: si quis, tarn masculos quam feminas complectitur."—Dig. L. 16, 1 (De Verborum significatione).

"Nurum appellatio etiam ad pronorum et ultra porrigenda est."—Ib. L. 16, 50.

(r) Cic. de Off. 1, 3, c. 32, 113.
(s) Macbeth, act v. sc. vii.
(t) Vide ante, vol. i. p. 250.
(u) Comm. de Jur. Civ. i. 15, p. 43.
(x) "Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita judicare vel respondere."—Dig. i. 3, 24.

"Incivile, id est iniquum et contra jus."—Donellus, Comm. de Jur. Civ. 1, 13, p. 32.

Vattel, i. 2, c. 17, 285.
It may be necessary to affix a different signification to the same term in different parts of the same instrument, the term being construed according to the subject matter, pro subjecta materia (y). Vattel illustrates this position by an example showing that the word day might be employed in two meanings in one and the same Treaty. It might be stipulated in a Treaty that there should be a truce for fifty days, upon the condition that during eight successive days the belligerent parties should, through their agents, endeavour to effect a reconciliation; the fifty days of the truce would be days and nights or days of twenty-four hours, according to the ordinary legal computation; but it would be irrational to contend that the condition would not be fulfilled unless the agents of the belligerent parties were, during the eight days, to labour night and day without intermission.

3. Words of art, or technical words are to be construed according to their technical meaning. This is as universal a maxim as any that can be found in jurisprudence. It finds its application in International Jurisprudence chiefly upon questions of geographical or local distinctions (z).

LXXI. The principles which have been laid down may

(y) "Præter hæc multa reperimus tractata et de petizione hereditatis, et de distractis rebus hereditariis, et de dolo preterito, et de fructibus, de quibus, quum forma senatusconsulito sit data, optimum est, ipsius, senatusconsulti interpretationem facere, verbis ejus relatis." Then follow the words of the S. Consultum, and the rule deduced is, "Aptanda est igitur nobis singulis verbis senatusconsulti congruens interpretation."—Dig. v. 3, 20, 6.

"Utrum autem omne pretium restituere debet bone fidei possessor, an vero ita demum, si factus sit locupletior? videndum; finge pretium acceptum vel perdidisse, vel consumisse, vel donasse. Et verbum quidem: pervenisse, ambiguum est, solunmne hoc continet, quod prima racione fuerit, an vero et id, quod durat? Et puto sequentem clausulam senatusconsulti sequendam, etsi hæc sit ambigua, ut ita demum computet, si factus sit locupletior."—ib. s. 23.

(z) Grot. II. 16, 13; III. 20, 33.
Vattel, iv. s. 32.
Sir L. Jenkins, ii. 736.
suffice for the due interpretation of those Treaties in which the language clearly expresses the intention of the contracting parties, and with respect to which there is no circumstance which prevents us from recognising this intention so expressed, as containing the true meaning of the contract.

LXXII. We have now to consider those cases in which the language (a) employed gives rise to a doubt as to the intention of the contracting parties, and therefore requires for its elucidation a logical interpretation. This doubt may be occasioned either by the uncertainty or by the impropriety of the language.

Each of these divisions may admit of separate rules of interpretation. There are, however, certain general rules which may be said to be equally and without distinction applicable to both.

LXXIII. (b) First,—The rule which has already been adverted to, of deriving the interpretation of a particular passage from a comparison with the whole context of the instrument, and which mode of interpretation belongs as much to the logical as to the grammatical division of the subject. Mr. Wildman illustrates this position by the following example:—"the ninth article of the Treaty of " Utrecht provided that the port of Dunkirk should be " destroyed: 'Nec dicta munimenta portus moles aut " 'aggeres denuo unquam reficiantur.' The plain inten-
tion of this stipulation was, to prevent the existence of a

(a) "Scripti et voluntatis frequentissima inter consultos quæstio est: et pars magna controversiae juris hinc pendet."—Quintil. Inst. Orator, lib. vii. c. 6. (b) "Deprehenditur sententia angustior seu lex plus scripsisse, minus sensisse, quatuor ex rebus; quorum in singulis si verba ex sententia temperari, nec longius produci verba, quorum in singulis si verba, et sequi omnia cum ad sententiam et vim legis cogniscendam pertinent, diligenter in omnibus rebus quaerenda et spectanda sunt."—Donellus, Comm. de Jur. Civ. i. 13, p. 31. Dig. L. 16, 126, contains a good illustration of the rule.
"French port of military equipment in the midst of the "Channel. The King of France, while he was destroying "the port of Dunkirk, in accordance with the article of the "Treaty, was constructing at Mardick, at the distance of a "league, another port of greater dimensions and importance. "The English Government remonstrated upon the absurdity "of putting such a literal construction upon the article as "would entirely defeat its object (c); and the French "Government ultimately acquiesced, and discontinued the "works (d). It was stipulated by the fourth article of the "Treaty between France and England, concluded at the "Hague in 1777, that no new port should be formed within "two leagues of Dunkirk and Mardick" (e).

Secondly (f),—The rule of considering the ground or rea-"son (ratio legis) in which the Treaty originated, and the "object of those who were parties to it. This is a less safe "and less certain mode of interpretation, and one which re-"quires more caution in its use and application.

Thirdly,—The rule of instituting a comparison between "the Treaty in dispute and other Treaties, whether prior, pos-"terior, or contemporary, upon the same subject and between "the same parties. This is a source from which the intention "of the contracting parties may generally be fairly and safely "derived; at all events it may be derived from this source in a "less suspicious manner than from a reference to those "facts and circumstances (themselves, perhaps, a matter of

(c) Grotius, ii. 16, xx. 2, 3.
(d) Floss, iv. 388, et seq.
(f) "Si generalem aliquam orationem legis alia pars ejusdem legis nominatim non mutabit, aut minuet: secundo loco ratio legis consulenda est. Ex hac preceipue voluntas et sententia legis perspicitur. Quin imo ratio nihil est, nisi voluntas legis: siquidem ratio et causa legis est id, quod lex sibi propositum habuit, ut legem constitueret; id, propter quod lex lata est, et sine quo lata non esset; denique quod lex in jure constituoendo consequi voluit."—Donellus, Comm. de Jur. Civ. i. 13, p. 32.— Grot. ii. 16, 8.
dispute,) which immediately preceded the conclusion of the Treaty (g).

Fourthly,—The rule of having regard to the consequences, to the justice or injustice, advantage or disadvantage, which would ensue from affixing a particular meaning to the doubtful expressions.

This is, indeed, a mode of interpretation to which recourse must be still more sparingly and more cautiously had.

Fifthly,—When a provision or clause in a Treaty is capable of two significations, it should be understood in that one which will allow it to operate, rather than in that which will deny to it effect (h). Thus, according to Municipal Law, if in a partition between Peter and Paul, it is agreed that Peter shall have a way over his land, though in strict grammatical construction this would mean his own land; yet as in that sense the agreement would be nugatory, it must be construed to mean the land of Paul (i). This rule is perhaps a corollary from that which has been already stated, viz., that the intention, rather than the words, of the contracting parties is to be considered. Both rest on the

(g) "Non est novum, ut priores leges ad posteriores trahantur."—Dig. i. 3, 26.

"Ideo, quia antiquiores leges ad posteriores trahi usitatum est, semper quasi hoc legisbus inesse credi oportet ut ad eas quoque personas et ad eas res pertinent, qua quandoque similes erunt."—Ib. 27.

"Sed et posteriores leges ad priores pertinent, nisi contrarie sint; idque multis argumentis probatur."—Ib. 28.

(h) "Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi, quo res, qua de agitur, in tuto sit."—Dig. xlvi. i. 80.

(i) Pothier (Evans' transl.) i. p. 54.

"Si tibi pecuniam donassem, ut tu mihi eandem crederes, an credita fieret? Dixi in hujusmodi propositionibus non propriis verbis nos uti; nam talem contractum neque donationem esse, neque pecuniam creditam; donationem non esse, quia non ea mente pecunia daretur, ut omnimodo penes accipientem maneret; creditam non esse, quia exsolvendi causa magis daretur, quam alterius obligandi. Igitur si is, qui pecuniam hac conditione accepit, ut mihi in creditum daret, acceptam dederit, non fore creditam; magis enim meum accepisse intelligi debeo. Sed hae intelligenda sunt propter subtilitatem verborum; benignius tamen est, utrumque valere."—Dig. xii. i. 20.
presumption of common sense, that no contract is entered into with the intention of being nugatory (k).

Sixthly,—When the same provision or sentence expresses two meanings, that one which most conduces to carry into effect the end and object of the Convention should be adopted (l).

Seventhly,—An ambiguity in the terms of a Convention may sometimes,—due regard being of course had to the subject matter,—be explained by the common use of those terms in the country, with respect to which more especially the engagement is made (m).

Eighthly,—The rule, that the influence and authority of usage in the interpretation of private covenants, is such, that customary clauses, though not expressed, are held to be contained therein, is in its spirit applicable to International covenants (n).

LXXIV. We have now to consider the cases in which doubt arises from the uncertainty of the expression: and first, as to the nature of this uncertainty. It will generally be found to arise either from—1. incompleteness: 2. or ambiguity.

LXXV. The uncertainty caused by incompleteness, partakes of the character of a speech interrupted, before the
thought intended to be conveyed by it has been fully uttered (o).

The Roman Law furnishes instances of such incompleteness, referring to cases in which the law has required a deed or act of business to be attested by witnesses, but has omitted to specify the number (p); or where a testator has required a sum of money to be paid, but omitted to specify the amount or the coin (q).

LXXVI. The uncertainty arising from ambiguity is more important in its character and more frequent in its occurrence. It is of two kinds, 1. The ambiguity of single expressions (singulorum verborum); 2. The ambiguity which springs from the general construction (compositione orationis) of the instrument (r).

LXXVII. The ambiguity of single expressions arises when one object only is intended to be designated, but the expression used for the purpose embraces more than one. In civil affairs this happens more frequently with respect to the testaments and contracts of individuals, than with respect to public laws; but the Treaty or International Covenant, it must be remembered, partakes of the character both of a law and a contract. The Roman Law suggests as instances

(o) Savigny, R. R. i. 36.
(p) Nov. 107, c. i. In the preface to this novel, it is remarked that the wills of testators were often so imperfectly expressed, that they required Diviners rather than Interpreters: "Εἰς τοσαυτίνων ἀπόλιμαν ἡγάλον, ὅστε μὲν τε ἐπι πᾶλλον ἡ ἱματία τὰ τούτα προσδύναι." So the English lawyers have a maxim, "Divinatio non interpretatio est quae omnino recedit a litera."
(q) "Et si plures fuerint testes adhibiti, sufficit solennem numerum exaudire." "Sed et si notam postea adjecterit legato vel sua voce vel litteris, vel summam, vel nomen legataris, quod non scripsisset, vel nummorum qualitatem, an recte fecerit? Et puto etiam qualitatem nummorum posse postea addi; nam et si addita non fuisset, utique placet conjunctionem fieri ejus, quod reliquit, vel ex vicinis scripturis, vel ex consuetudine patrisfamilias vel regionis."—Dig. xxviii. i. 21.
(r) Donellus, Com. de Jur. Civ. i. p. 43.
Savigny, R. R. i. 36.
Dig. xxviii. 1, 21, 1.
of this kind of ambiguity, testaments in which the slave Stichus is bequeathed as a legacy, Titius is named as legatee, and the farm of Cornelius (s) is the subject of the bequest; but there are several slaves named Stichus, several persons named Titius, several farms designated the farm of Cornelius.

Or it may happen that the expressions relate to some abstract idea, a class of things or persons, and then the ambiguity arises either from the fact, 1. that the expression used has various and different significations, like the expressions puer, familia, potestas, praescriptio, in the Roman Law (t). 2. that it has a restricted (stricta) and an extensive (lata) signification, as the words cognatio, pignus, hypotheca, adoptio had in the Roman Law (u). The interpretation applied to these two kinds of ambiguity is usually called by jurists declaratory (declarativa).

LXXVIII. The ambiguity which arises from the general construction (compositione orationis), was not unnoticed by the Roman lawyers, both with respect to laws and to the instruments of private business.

The former is, indeed, well illustrated by an instance which occurs in the Digest itself, in which the jurist, after stating various questions requiring the application of a principle of law, ends the paragraph by the words mihi contra videtur: the interpretation depends entirely on the

(s) Dig. xxx. 39, 6.
(t) Savigny, R. R. i. s. 36.
Dig. L. 16, 105. Familiae appellatio—varie accepta est, nam et in res, et in personas diducitur, &c.
Cod. iii. 39, 5. The word praescriptio is used to signify either a legal pleading, defensive plea, or prescription.

Ib. 5, 13. Use of the phrase, si tamen extant, may mean if they are not destroyed, or if they have not been alienated by the husband (extant apud maritum).

(u) Dig. i. 7, 1, s. 1. "Quod adoptionis nomen est quidem generale, in duas autem species dividitur," &c.

Ib. viii. 2, 23. "Quodsi ita sit cautum, ne luminibus officiatur, ambigua est scriptura, utrumque his luminibus officiatur, quæ nunc sunt an etiam his, quæ postea quoque fuerint."
question, whether these words relate to the \textit{whole} of the foregoing paragraph, or to a \textit{part} of it \((x)\).

Cicero \((y)\) puts a well-known case of ambiguity relating to private instruments, in the direction given by a testator to his heir with respect to a certain weight of silver plate to be given to his (testator's) wife, the bequest being so worded that the collocation of the words \((\textit{quæ volet})\) left it doubtful whether the selection of the \textit{particular} plate rested with the heir or the wife. The rules of interpretation, it may be observed, which Cicero suggests are much the same as those which are laid down in this chapter.

\textbf{LXXIX.} However different these forms of doubt, arising from the \textit{incompleteness} or \textit{ambiguity} of an instrument, may be, they have this feature in common, that they offer an obstacle to the full understanding of the intention of the framers of the Treaty in which they occur.

Whether this obstacle has arisen from the want of clearness in the thoughts, or in an imperfect mastery over language in the provisions of the Treaty, a \textit{logical interpretation} is equally needed; and for this purpose the application of the general rules, already laid down, must be first resorted to.

\textbf{LXXX.} With respect to difficulties of construction,
arising from both the foregoing sources of doubt, two general rules are applicable (z).

1. That the contracting party, who might and ought to have expressed himself clearly and fully, must take the consequences of his carelessness, and cannot, as a general rule, introduce subsequent restrictions or extensions of his meaning (a).

2. That what is sufficiently declared must be taken to be true, and to have been the true intention of the party entering into the engagement.

LXXXI. Under the second branch of logical interpretation, we have to consider cases of doubt, arising from the impropriety of the expression employed. That is to say, cases in which the expression does convey a meaning, and abstractedly considered, an unambiguous meaning, but one which, when the circumstances are considered, evidently does not convey the meaning intended by the author or authors of the instrument in which it occurs.

In such cases is the word or the intention to prevail? It must be answered, that as the only function of the word is

(z) Vattel, ib. ss. 264-266.

(a) "In stipulationibus quae quaeritur quid actum sit, verba contra stipulatorem interpretanda sunt."—Digg. xlv. i. 38, 18.

"Veteribus placet, pactionem obscuram vel ambiguam venditori et qui locavit, nocere, in quorum fuit potestate legem apertius conscribere."—Digg. II. 14, 39; et vide ib. xviii. 1, 21; L. 17, 172; xviii. 1, 33.

Mr. Evans very justly observes, in a note to his edition of Pothier on Obligations, that "The rule of the English Law is directly the reverse, and the words of an engagement are to be construed most strongly against the person engaging." He adds that "These two opposite rules have probably both resulted from the same maxim, that verba ambigua fortius accipiantur contra proferentem. By the Roman Law, the words of the stipulation were necessarily those of the person to whom the promise was made; the person promising only assented to the question proposed by the person stipulating. There is nothing similar to this in the covenants and engagements used in England; but an indenture is the deed of both parties, and the words it contains are taken as the words of both, except as to those parts which are in their nature only applicable to one of them."—Vol. i. p. 58. See, too, Savigny, Obligationenrecht, II. 198, 4, 5, who expresses himself exactly to the same effect.
to express the intention, to sacrifice the latter to the former is to prefer the means to the end. The Roman jurists justly said of laws, "Non hoc est, verba earum tenere, sed vim ac " potestatem" (b); and not less justly of contracts, "In " conventionibus contrahentium voluntatem potius, quam " verba spectari placuit" (c).

LXXXII. Cases of this character exhibit a much less varied form than those in which the doubt arises from the uncertainty of the expression.

The impropriety of the words to express the meaning arises, when the words convey more or less than the meaning of the person using them. In the former case the impropriety of the expression is rectified by a narrowing or restrictive interpretation (interpretatio restrictiva), in the latter by a widening or extensive interpretation (interpretatio extensiva).

LXXXIII. The object of both kinds of interpretation is identical, namely, to bring the expression in unison with the thought, and the necessity and justification of both is founded upon the hypothesis, that the thought is as demonstrably clear as the expression is evidently improper. Although, therefore, this kind of interpretation has been ranged under the class designated as logical, it manifestly is also of an historical character, necessitating a recurrence to the record of the facts which preceded or accompanied the formation of the Treaty; and here again we must have recourse to the general rules of interpretation which have been already laid down.

In the application, equally of the restrictive as of the extensive modes of interpretation, the most scrupulous caution is to be observed, lest the true bounds of the doctrine which

(b) *Dig.* i. 3, 17.

"Verbum, ex legibus sic accipiendum est: tam ex legum sententia, quam ex verbis."—Dig. L. 16, 6.

"Sed eti maxime verba legis hanc habeant intellectum, tamen mens legislatoris alid vult."—*Ib.* xxvii. 1, 13, 2.

"Non oportere jus civile calumniari neque verba captari, sed qua mente quid diceretur, animadvertere convenire."—*Ib.* x. 4, 19.

(c) *Dig.* L. 16, 219.
we are considering be overpassed, and inference \((d)\) or analogy \((e)\), be substituted for interpretation, in which case it is clear that the expression is not rectified by being brought into unison with the idea, but that a new idea is substituted by the interpreter in the place of that which was present to the mind of the framers of the Treaty.

LXXXIV. With respect to the mode of interpretation, which has been designated as extensive, Vattel, agreeing with Grotius and Puffendorf \((f)\), is of opinion that where the sufficient and only reason of a provision is undisputed and certain, such provision may be extended to cases to which the same \((g)\) reason applies, although the provision be not comprised within the signification of the terms employed. This principle is sometimes called, an adhering to the spirit rather than the letter \((h)\). The Koran forbad wine to the Mahometans, and in so doing forbad all intoxicating liquors. It was a provision in a Treaty that a certain city should not be enclosed within walls: at the time when the Treaty was made, walls were the only species of fortifications in use; it would not be lawful to fortify that city by means of fosses and earthworks, because the spirit and intention of the Treaty was to prevent the fortification of the town. Sempronius willed in his last testament that if the child of his then pregnant wife should die, Curius should be his heir. The testator died, but his wife proved not to be pregnant. Are the heirs under an in-

\((d)\) Savigny, R. R. i. s. 37.

\((e)\) "Analogia præter legis argumentum novi aliquid inducimus, ideo, quod id quoque voluisse legislatorem probabile sit: quae quidem res est et discriminis et cautionis plenissima."—Muhlenbruch, Doctrina Pandect. I. 1, s. 64.

\((f)\) Grotius, 1. ii. c. 16, 20.

Puffendorf, 1. v. c. 12, 18.

Vattel, 1. ii. c. 17, s. 291–2.

\((g)\) If, Grotius observes, it only comes within a like reason, this will not show that they were included in his meaning.

\((h)\) "Ergo hic status ducit ex eo quod scriptum est, id quod incertum est: quod quoniam ratiocinatione colligitur, ratiocinativus dicitur."—Quintilian, Inst. Orat. I. vii. c. 8.
testacy, or Curius, to possess the property? The latter, for it is manifest that the intention of the testator was that Curius should stand next to the testator's own child. These are the illustrations employed by Vattel and his great predecessors, in support of the position. One, it will be seen, borrowed from a law, one from a convention, one from a unilateral act or testament. Vattel, however, enforces with great earnestness the necessity of attending the use of a mode of interpretation which is not authorised by the terms of the instrument. It may only be resorted to in cases where there is no dispute with respect to the true and only reason of the provision; and the cardinal rule, that the true sense of a promise is not only that which was in the mind of the promiser (i), but also that which has been sufficiently declared, and which both the contracting parties must have reasonably understood, is never to be departed from. On the one hand, therefore, the instrument is not to be construed agreeably to the reason which one of the parties possibly might have had in his mind. On the other hand, it certainly ought to be construed agreeably to the reason upon which the parties clearly did proceed.

LXXXV. This rule of extensive interpretation excludes all the evasions and pretexts which have been resorted to for the purpose of evading stipulations. As a general maxim, it is true that good faith clings to the spirit, and fraud to the letter of the convention (k).

When the Corinthians, being forbidden to give ships to the Athenians, sold them some, at a merely nominal price,—when the Queen of Egypt refused to pay tribute to the Rhodians

(i) Vide ante, vol. i. p. 249.

(k) "Circumscriptio semper crimen, sub specie legis, involvit. Quod appareat in illa legitimum est, quod latet, insidiosum."—Seneca, I. vi. Controv. 3.

"Contra legem facit, qui id facit, quod Lex prohibet: in fraudem vero legis, qui salvis verbis legis sententiam ejus circumvenit. Fraus enim legi fit ubi, quod fieri noluit, fieri autem non vetuit, id fit; et quod distat ἡδην ἀπὸ διανοιαῖ (id est dictum a sententia), hoc distat fraus ab eo, quod contra legem fit."—Dig. i. 3, 29-30.
for Pharos, because, though as an island, it was, under the convention, liable to such tribute, while the demand was being made she had joined it to the continent by a mole,—when these and similar frauds are attempted, the rule of *extensive interpretation* by which they are condemned, is the rule of acknowledged right (*l*).

**LXXXVI.** There is another maxim of law relating to Private Contracts, which relates to the *extensive interpretation*, and the principle of which is applicable to International Covenants. Pothier says that (*m*), "When the object of the "agreement is universally to include everything of a given "nature (une universalité des choses), the general description "will comprise all particular articles, although they may not "have been in the knowledge of the parties. For instance, "an engagement which A. makes with B. to abandon his "share in a succession for a certain sum. This agreement "includes everything which makes part of the succession, "whether known or not; the intention of A. and B. was to "contract for the whole. Therefore it is decided that A. "cannot object to the agreement, under pretence that a "considerable property has been found to belong to the suc-
"cession of which both parties had no knowledge."

**LXXXVII.** *Restrictive* is the reverse of *Extensive Interpretation*, but founded upon the same principle of making the language correspond with the intention of the parties to the convention.

Grotius lays down three predicaments in which *Restrictive Interpretation* is necessary.

1. When, without a limitation of the literal meaning, an absurdity would follow.

---

(*l*) The Roman lawyers classed the modes of evading a prohibitory law under four heads:—

By disguising or changing—

1. The *thing* which was the subject of the contract.—*Dig.* xiv. 6, 7, 3.

2. The *person*.—*Ib.* xxiv. 1, 5.

3. The *nature* of the contract.—*Ib.*

4. The *manner* of contracting.—*Ib.* xvi. 1, 8, 14.

(*m*) Pothier (Evans' Transl.), vol. i. p. 50.
2. When the only cause or reason which moved the will of the parties to the contract has ceased.

3. When the matter of the promise or engagement is defective.

LXXXVIII. It is a maxim of law that no one is supposed to intend what is absurd. A man bequeaths his house to one person, and his garden to another; it would be absurd to suppose that the latter had a garden bequeathed to him into which he could not enter. The absolute bequest of the house must therefore be restricted, and subjected to the condition of allowing a passage to the owner of the garden. Vattel applies this rule to the conduct of States, and observes that when the strict meaning of a Treaty would lead to an unlawful consequence, it must be restricted. The State which has promised to assist an ally in all his wars, ought not to assist him in a war which is manifestly unjust.

LXXXIX. Under the second class of cases mentioned by Grotius, must be discussed the important question arising from the maxim of Civilians, conventio omnis intelligitur rebus sic stantibus. When that state of things which was essential to, and the moving cause of, the promise or engagement, has undergone a material change, or has ceased, the foundation of the promise or engagement is gone, and their obligation has ceased. This proposition rests upon the principle that the condition of rebus sic stantibus is tacitly annexed to every covenant. Grotius (n) admits the soundness of this doctrine only in cases in which it is quite clear that the existing state of things was the sole cause of the contract.

Vattel illustrates the doctrine by several instances (o). An Elective Prince, having no children, promises an ally that he

(n) "Solet et hoc disputari, an promissa in se habeant tacitam conditionem, si res maneant quo sunt loco: quod negandum est, nisi aperissime pateat statum rerum presentem in unica illa quam diximus ratione inclusum esse. Sic passim in historiis legimus legatos a suscepto itinere domum redisse deserta legatione, quod res ita mutatas intelligerent, ut tota legationis materia aut causa cessaret."—L. ii. c. xvi. 25, 2.

(o) L. ii. c. xvii. 296.
will endeavour to procure for him the right of succession, but a son is afterwards born to him. Who can doubt that the engagement is made void by this subsequent event? A sovereign, in time of peace, promises to send succour to an ally; before he can do so, war breaks out in his own dominions: he is not bound to fulfil a promise which would leave him defenceless (p). So, if a State be engaged to furnish another State with certain articles of commerce, and subsequent unforeseen circumstances render these articles of paramount importance to the subjects of the engaging State, the delivery of the articles cannot be reasonably required. If, for instance, a State has promised to furnish corn to another State, and a dearth takes place, so that there be not corn enough for its own subjects (q), in this collision of duties, the preference must be given to the latter (r). Necessity, when real and bona fide, overrides the obligation of the promise.

Lord Stowell observes that "a clear necessity will be a "sufficient justification of everything that is done fairly, and with good faith under it" (s). And again, "that the "law of cases of necessity is not likely to be well furnished "with precise rules; necessity creates the law, it supersedes "rules, and whatever is reasonable and just in such cases is "likewise legal. It is not to be considered as matter of "surprise, therefore, if much instituted rule is not to be "found on such subjects" (t).

(p) "Humana jura omnia ita esse comparata, ut non obligent in sum-
ma necessitate."—Grot. l. ii. c. 18–4, s. 6.

(q) On this principle Great Britain arbitrated between Sardinia and
Tunis, 1843–4. With respect to events rendering the performance of a con-
tract illegal in the case of individuals, owing to the breaking out of
war between the nations to which they belong, see Abbott on Merchant
Ships and Seamen, 11th edit. pt. iv. ch. ii. p. 453. See also The Tentonia,
Admiralty Court, March 28, 1871, Weekly Notes, p. 74.

(r) Vide ante, p. 12. n.


(t) The Gratitudine, 3 Ibid. 266.
Treaties concluded against a particular State, in order to preserve the Balance of Power, must necessarily be subject to change, so far as the parties are concerned, when one of them endeavours to violate the principle by his own unlawful aggrandisement.

Vattel, in accordance with the natural feelings of honour and honesty, inculcates the utmost caution in the application of the rule of interpretation which has been under discussion. It is manifest that the State, like the Individual, which takes advantage of every change of affairs to disengage itself from the obligations of a solemn covenant, weakens the foundations of that good faith on which the peace of the world depends (u).

XC. The caution which Vattel so strongly inculcates with respect to the rule, "conventio omnis intelligitur rebus sic stantibus," was never more amply or more honourably illustrated than in the conduct of Great Britain with respect to the Russo-Dutch Loan.

During the wars of the French Revolution, Great Britain took possession of the colonies belonging to the Dutch, not because she was at war with Holland, but to preserve them from France when France invaded Holland. When, in 1814, Holland was liberated from the dominion of France, Great Britain conceived herself bound in honour to restore to Holland these colonies. Therefore, on the 13th August, 1814, Great Britain concluded a Convention with the Netherlands, in the first article of which she engaged to restore to the Netherlands all the colonies which were possessed by Holland on the 1st of January 1803, with the exception of the Cape of Good Hope, Dememara, Essequibo, and Berbice, which possessions were to be disposed of by a supplementary Convention. That supplementary Convention was contained in the first additional article to the Convention just referred to, namely, of the 13th August, 1814. By that additional article, Great Britain engaged, first, to pay 1,000,000l. to Sweden; secondly, to advance 2,000,000l.

(u) Vide ante, p. 73. Conduct of Russia, 1871.
to be applied towards augmenting and improving the defences of the Low Countries; thirdly, to bear equally with Holland such further charges as might be agreed upon towards the final and satisfactory settlement of the Low Countries, in union with Holland, &c., not exceeding in the whole the sum of 3,000,000l., to be defrayed by Great Britain. In consideration of these engagements, the Netherlands agreed to cede in full sovereignty to His Britannic Majesty the colonies of the Cape of Good Hope, Demerara, Essequibo, and Berbice. The manner in which this latter sum was to be expended was determined by a subsequent Convention(x) signed on the 19th of May, 1815, between Great Britain, the King of the Netherlands, and Russia, by which Great Britain undertook the payment of a part of a debt owed by Russia to Holland.

According to the terms of the Convention, "His Majesty the King of the Netherlands, being desirous, upon the final reunion of the Belgic provinces with Holland, to render to the Allied Powers who were parties to the Treaty concluded at Chaumont on the 1st March, 1814, a suitable return for the heavy expense incurred by them in delivering the said territories from the power of the enemy; and the said Powers having, in consideration of arrangements made with each other, mutually agreed to waive their several pretensions under this head in favour of His Majesty the Emperor of all the Russias, His said Majesty the King of the Netherlands has thereupon resolved to proceed immediately to execute with His Imperial Majesty a Convention to the following effect, to which His Britannic

(x) Hansard's Parl. Deb. vol. xc. N. S. vol. xci.—Debates on Cracow. See especially the speeches of Lord John Russell, Sir W. Molesworth, Sir R. Peel, and Mr. Stuart Wortley. See, too, the question again mooted in the House of Commons, by Lord Dudley Stuart, August 1, 1854, and the speech of Sir W. Molesworth, which exhausts the subject. 55 Geo. III. c. 115. (28th June, 1815.) 2 & 3 Wm. IV. c. 81 (3rd August, 1832.) Hertzlett's Treaties, vol. iv. p. 307, &c.
Majesty agrees to be a party, in pursuance of engagements taken by His said Majesty with the King of the Netherlands, in a Convention signed at London on the 13th day of August, 1814."

In the second article, their Belgic and Britannic Majesties engaged to pay an annual interest of 5 per cent. on the said capitals, together with a sinking fund of 1 per cent. In the third and fourth articles it was agreed that these payments should be made through the agency of Russia, and that Russia should "continue as heretofore to be security to the creditors for the whole of the said loan, and shall be charged with the administration of the same, their Belgic and Britannic Majesties remaining liable to his Imperial Majesty, each for the punctual discharge of the respective proportions of the said charge."

By the fifth article it was said to be "understood and agreed between the high contracting parties, that the said payments on the part of their Majesties the King of the Netherlands and the King of Great Britain, as aforesaid, shall cease and determine should the possession and sovereignty (which God forbid!) of the Belgic provinces at any time pass or be severed from the dominions of His Majesty the King of the Netherlands previous to the complete liquidation of the same. It is also understood and agreed between the high contracting parties, that the payments on the part of their Majesties the King of the Netherlands and the King of Great Britain, as aforesaid, shall not be interrupted in the event (which God forbid!) of a war breaking out between any of the three high contracting parties; the government of His Majesty the Emperor of all the Russias being actually bound to its creditors by a similar agreement."

In 1831, after the separation of Holland and Belgium, Great Britain having changed her mind with respect to the advantage accruing to Europe from the union of these territories, was anxious to induce Russia to assent with her to their severance, and to the establishment of the new kingdom.
of Belgium. For this purpose, Great Britain entered into a
new Treaty with Russia, whereby, though the event had
happened which released Great Britain from the obligation
of continuing to pay her portion of the loan, she nevertheless
bound herself again to do so, by a new Convention entered
into in 1831, in which it was said that:

"Their Majesties the King of the United Kingdom of
Great Britain and Ireland and the Emperor of all the
Russias, considering that the events which have occurred
in the United Kingdom of the Netherlands, since the year
1830, have rendered it necessary that the Courts of Great
Britain and Russia should examine the stipulations of their
Convention of the 19th May, 1815, as well as of the Ad-
ditional Article annexed thereto; considering that such
examination has led the two high contracting parties to the
conclusion, that complete agreement does not exist between
the letter and the spirit of that Convention, when regarded
in connection with the circumstances which attended the
separation that has taken place between the two principal
divisions of the United Kingdom of the Netherlands; but
that, on referring to the object of the above-mentioned
Convention of the 19th May, 1815, it appears that that
object was to afford to Great Britain a guarantee that
Russia would, on all questions concerning Belgium, identify
her policy with that which the Court of London had deemed
the best adapted for the maintenance of a just balance of
power in Europe; and, on the other hand, to secure to
Russia the payment of a portion of her old Dutch debt,
in consideration of the general arrangements of the Con-
gress of Vienna (y), to which she had given her adhesion—
arrangements which remain in full force; their said
Majesties being desirous, at the present moment, that the
same principles should continue to govern their relations
with each other, and that the special tie which the Con-

(y) Not the Treaty of Vienna, with which, in the debate, it was some-
times confounded.
RUSSO-DUTCH LOAN.

"vention of the 19th May, 1815, had formed between the "two Courts, should be maintained, have, &c.

"Art. I.—In virtue of the considerations above specified, "His Britannic Majesty engages to recommend to his Parlia-
"ment to enable him to undertake to continue, on his part, "the payments stipulated in the Convention of the 19th "May, 1815, according to the mode, and until the com-
"pletion of the sum fixed for Great Britain in the said "Convention.

"Art. II.—In virtue of the same considerations, His Ma-
"jesty the Emperor of all the Russias engages, that if (which "God forbid!) the arrangements agreed upon for the inde-
"pendence and the neutrality of Belgium, and to the main-
"tenance of which the two high powers are equally bound, "should be endangered by the course of events, he will not "contract any other engagement, without a previous agree-
"ment with His Britannic Majesty, and his formal assent."

In 1847, after the incorporation of the free city of Cracow into the Austrian dominions, Mr. Hume moved in the House of Commons the following resolutions:

"1. That this House, considering the faithful observance of "the General Act of Congress, or Treaty of Vienna, of the "9th day of June, 1815, as the basis of the peace and "welfare of Europe, views with alarm and indignation the in-
"corporation of the free city of Cracow, and of its territory, "into the empire of Austria, by virtue of a Convention "entered into at Vienna, on the 6th day of November, 1846, "by Russia, Prussia, and Austria, in manifest violation of "the said Treaty.

"2. That it appears, by returns laid before Parliament, "that there has already been paid from the British treasury "towards the principal and for the interest of the debt, "called Russo-Dutch loan, between the years 1816 and "1846, both inclusive, the sum of 40,493,750 florins, equal "to 3,374,479½ sterling money; and that the liquidation of "the principal and interest of the remaining part of the loan, "as stipulated by the Act of 2 & 3 Will. 4, c. 81, will
"require further annual payments from the British Treasury " until the year 1915, amounting to 47,006,250 florins, equal " to 3,917,187. sterling money, making then the aggregate " payment of 7,291,666l. and the average, for each of the " hundred years, of 72,916l.

3. That the Convention of the 16th day of November, " 1831, between His Majesty the King of Great Britain and " Ireland and the Emperor of all the Russias, was made to " explain the stipulations of the Treaty between Great " Britain, Russia, and the Netherlands, signed at London on " the 19th day of May, 1815, and included in the Treaty of " Vienna; and, by that Convention, it was agreed by Great " Britain to secure to Russia the payment of a portion of " her old Dutch debt, in consideration of the general " arrangements of the Congress of Vienna, to which she " had given her adhesion—arrangements which remain in " full force."

4. That this house is, therefore, of opinion, that Russia " having withdrawn that adhesion, and those arrangements " being, through her act, no longer in force, the payments " from this country, on account of that debt, should be " henceforth suspended" (z).

The Government, however, with the support of the legis- " lature, refused to assent to these resolutions, principally upon these grounds: 1. That the loan had been undertaken by Great Britain partly on account of the exertions made by Russia with the other great powers in liberating Belgium from France, and annexing it to Holland. 2. Partly be- " cause Great Britain had undertaken the loan in some measure as a set-off against the Dutch possessions of the Cape of Good Hope, Demerara, Essequibo, and Berbice, retained by her after the conclusion of the peace, 1814–15. 3. Because the Convention of 1831 contemplated the continuance of the pay- " ment by Great Britain, even during a war with Russia. It was admitted, during the discussion, that the evidence of the

intention of the contracting parties was to be derived from the contemporary instruments (a), and from the main object, even against the letter, of the Convention.

In August, 1854, the attempt of Mr. Hume was renewed by Lord Dudley Stuart. The motion for repudiating the loan was founded upon the averment that Russia had violated a main article of the Treaty of Vienna, with respect to the free navigation of rivers flowing through divers countries (b), by rendering the mouths of the Danube unnavigable (c); and that therefore she was not entitled to further payment of the loan. The motion, which was in substance the same as that of Mr. Hume, was, for the like reasons, and for the additional reason that Great Britain was, on account of being at war with Russia, bound, by a regard to national honour, to be more than ever jealous of affording the slightest ground for the accusation that she wished to repudiate her debts justly contracted with the power which was now her enemy, rejected (d).

XCI. It is quite consistent with the maintenance of this faith, when the interpretation of a Treaty, with reference to a case not foreseen or provided for by it, has become necessary, to conduct that interpretation as nearly as possible in accordance with what the party would have done if the circumstance which has now happened had been foreseen. This is sometimes called the argumentum a ratione legis amplâ, and is founded on the rule of law: “ubi eadem ratio ibi idem jus statuendum.”

XCII. (e) When the apprehension of a particular event has been the reason of a particular provision of a Treaty,

(a) See Sir Robert Peel’s remarks on the despatch of Lord Castlereagh, 13th February, 1815, as explanatory of the Convention.

(b) Vide ante, vol. i. p. 195. It may well be doubted whether the provisions of the Treaty of Vienna (which, by the way, did not include the Convention of the 19th of May) could affect the Russian possession of the mouths of the Danube, acquired by the Treaty of Adrianople, 1829.

(c) Vide ante, vol. i. p. 199.

(d) Vide post, as to the effect of war upon the debts both of States and subjects. Vide ante, chap. iii. as to such debts in time of peace.

(e) Vattel, l. ii. c. 37, s. 298.
this provision is not to be restricted to cases in which such an event is improbable, but to be extended to all cases in which the event is possible. If a Treaty declare that no army or fleet shall be conducted to a certain place, it will not be allowable to conduct thither an army or a fleet, under pretence that no harm is intended by such a step; for the object of the provision was not only to prevent the actual occurrence of an evil, but to keep all danger, and all apprehension of danger, at a distance.

XCIII. However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears that the contracting parties proposed to covenant, and not others which were not within the scope of their intention or contemplation (f).

XCIV. When a case is expressed in a contract for the purpose of preventing any doubt which might otherwise arise as to whether the engagement resulting from the contract would extend to such case, the parties are not thereby understood to restrain the extent to which the engagement, in respect to other cases not so expressed, would legally reach (g).

This subject has also been considered in a case before the Supreme Court of the United States of America, respecting the construction of the Treaty of peace with Great Britain. During the war, the State of Virginia made a law, that all persons indebted to British subjects might pay the amount into the loan-office, which should be a good discharge. By the Treaty of peace it was provided that "creditors of either "side should meet with no lawful impediments for the re-"covery of their debts." The defendant had paid the money into the loan-office; but it was held that, in consequence of the Treaty of peace, he was liable to the plaintiff. Judge

(f) "Iniquum est enim perimi pacto id, de quo cogitatum non doce-
tur."—Dig. ii. 15, 9.

Vide ante, vol. i. pp. 52, 53.

(g) Vide ante, vol. i. p. 45.

"Quae, dubitationis tollendae causâ, contractibus inseruntur jus com-
mune non lœdunt."—Dig. L. 17, 81.
Chace, in giving his opinion to that effect, said: "In the "construction of contracts, words are to be taken in their "natural and obvious meaning, unless some good reason be "assigned to show that they should be understood in a dif-"ferent sense. The universality of the terms is equal to an "express specification on the Treaty, and indeed includes it. "For it is fair and conclusive reasoning, that if any descrip-"tion of debtors, or class of cases, were intended to be ex-"cepted, it would have been specified. The indefinite and "sweeping words made use of by the parties exclude the "idea of any class of cases having been intended to be ex-"cepted, and explode the doctrine of constructive discrimi-"nation" (h).

XCV. Under the extensive and restrictive kinds of inter-"pretation, Jurists have been in the habit of including a once "celebrated distinction between things of a favourable and "things of an odious nature.

(i) Barbeyrac rejected this distinction, on the ground that "these assumed qualities cannot found any safe rules of inter-"pretation; that the same characteristics may seem odious "to one party and favourable to another, according to the "dispositions of each, and the point of view from which they "regard them; that they are incapable therefore of a certain "definition; that it is admitted that the two qualities are "often blended together in one and the same subject; and, "above all, that without having recourse to this distinction, "sound rules of interpretation may be always obtained.

(k) Vattel, however, adheres to the distinction, but thinks

(h) Ware v. Highton, 3 Dallas (American), Reports, p. 199.
See, too, Hamiltons v. Eaton, Martin (American), Reports, 79.
Pothier (Evans' trans.), vol. i. p. 39.
(i) See his note on Grot. i. ii. c. 16, 10, in which he repeats "the opinion which he had already expressed in his commentary on Puffendorf, De Jure Nat. et Gent. s. 12.

(k) "One of the sections of Vattel which is relied on, states this pro-"position, 'That whatever tends to change the present state of things, is "also to be ranked in the class of odious things.' (B. ii. s. 305.) Is it not most manifest, that this proposition is, or at least may be, in many cases,
that, with respect to certain things, concerning which the intention of the parties is not clear, equity gives in some cases an extensive, in others a restrictive interpretation. This is unquestionably true, and is indeed the substance of what has been already stated, but the catalogue of things favourable, to which Vattel applies the extensive, and of things odious, to which he applies the restrictive interpretations, are of a very loose and disputable character; and the rules which he lays down appear to find their place with more propriety and accuracy under the other different heads which have been mentioned.

fundamentally wrong? If a people free themselves from a despotism, is it to be said, that the change of government is odious, and ought to be construed strictly? What, upon such a principle, is to become of the American Revolution, and of our State Governments, and State Constitutions? Suppose a well-ordered Government arises out of a state of disorder and anarchy, is such a Government to be considered odious? Another section (s. 508) adds, 'Since odious things are those whose restriction tends more certainly to equity than their extension, and since we ought to pursue that line which is most comformable to equity, when the will of the Legislature or of the contracting parties is not exactly known, we should, where there is a question of odious things, interpret the terms in the most limited sense. We may even, to a certain degree, adopt a figurative meaning, in order to avert the oppressive consequences of the proper and literal sense, or anything of an odious nature which it would involve.' Does not this section contain most lax and unsatisfactory ingredients for interpretation? Who is to decide whether it is most comformable to equity to extend or to restrict the sense? Who is to decide whether the provision is odious? According to this rule, the most opposite interpretations of the same words would be equally correct, according as the interpreter should deem it odious or salutary. Nay, the words are to be deserted, and a figurative sense adopted, whenever he deems it advisable, looking to the odious nature or consequence of the common sense."—Story on the Const. of the United States, vol. i. pp. 201, 202.
CHAPTER IX.

COLLISION OF TREATIES.

XCVI. It has been already remarked that it is not competent to a State to adopt customs or make Treaties which come into collision with Divine or Natural Law (a), or which affect the general International Law with respect to other States which are not parties to the Treaty (b). But a collision or opposition may happen between two human laws (c), two promises, or two Treaties; the fulfilment of both may be impossible, and in this case it is desirable to have recourse to some recognised rules for ascertaining to which the preference should be given (d). Grotius, borrowing from Cicero and Vattel, have here laid down various rules, which in such cases should be observed.

XCVII. 1. In all cases where a stipulation which is permissive, conflicts with one that commands, the former must yield to the latter. This doctrine that command outweighs permission was derived by Grotius from Cicero, and is adopted by all jurists; nevertheless a universal command, according to Barbeyrac, gives way to a particular permission.

2. A stipulation which may be complied with at any time must yield to one which must be executed directly or not at

(a) Vol. i. p. 26, s. 32.

“Pacta, que turpem causam continent, non sunt observanda.”—Dig. ii. xiv. 27, 4.

(b) “Privatorum conventio juri publico non derogat.”—Dig. L. 17, 45.

Vide ante, vol. i. p. 44, s. 50.

(c) Quintil. Instit. Orator. lib. vii. c. 7.

(d) Grot. I. ii. c. 16, 29.

Vattel, l. ii. c. 17, ss. 311, 321.

Rutherford, b. ii. c. 7, p. 430. (Ed. Baltimore, 1882.)
all. This rule is manifestly reasonable;—by the adoption of it both engagements may possibly be satisfied,—whereas by a contrary rule only one can be satisfied.

3. A prohibitory stipulation must be preferred, as a general rule, over one which is imperative,—upon the principle that every prohibition is absolute in itself, whereas every injunction is of necessity conditional, and supposes a power and an opportunity of doing what is enjoined. When this cannot be done without contravening a prohibitory stipulation, there is no opportunity, and therefore no moral possibility of acting; but this remark is true only in cases where the prohibition is absolute and unconditional.

4. When two stipulations, equal in other respects, conflict with each other, the more particular one has precedence over that which is more general. This is the rule in the conflict of laws, founded upon the principle that the legislator, when he speaks particularly, is held to be more carefully to guard against accidental exceptions, and therefore more unwilling to admit of any than when he speaks in general.

5. It is a rule, with respect to all prohibitions, that the prohibition which has a penalty attached to it is to be preferred to the one which has not, and that which has the greater penalty to that which has the lesser.

In the case of The Ringende Jacob, it was considered whether the freighting the ship to the enemy was or was not the lending prohibited in the Swedish Treaty. (October 21st, 1666.) Sir W. Scott said, "reference has been made "to an ancient Treaty between England and Sweden, which "forbids the subjects of either powers 'to sell or lend their "' ships for the use and advantage of the enemies of the "' other;' and as this prohibition is connected in the same "article with the subject of contraband, it is argued that "the carrying of contraband articles in the present cargo, "is such a lending as comes within the meaning of the "Treaty; but I cannot agree to that interpretation. To "let a ship on freight to go to the ports of the enemy, can-
not be termed lending, but in a very loose sense; and I "apprehend the true' meaning to have been, that they "should not give up the use and management of their ships "directly to the enemy, or put them under his absolute "power and direction. It is, besides, observable, that there "is no penalty annexed to this prohibition. I cannot think "that such a service as this is will make the vessel subject "to confiscation" (e).

6. A sound rule is often derived from the consideration of dates of Treaties. If there happen a collision between two affirmative Treaties concluded between the same contracting parties, the Treaty of more recent is preferred over that of later date. In this case both covenants have been made by the same powers, and therefore the subsequent might derogate from the former act. On the other hand, if a collision happened between two Treaties concluded between two different contracting parties, the more ancient one must be executed, because it was not within the competence of the party promising, to act in derogation of his antecedent engagements to another.

7. If of two engagements, contracted with the same party, only one can be fulfilled, it is true, as a general rule, the promisee may choose which of the two shall be performed; and if his will cannot be discovered, the promisor must fulfil the more important engagement, as being that of which the promisee would presumably require the fulfilment.

8. Vattel says, that when two duties stand in competition, that one which is the more considerable, the more praise-worthy and productive of the greater utility, is entitled to the preference. Lord Bacon says, that "it is a point worthy "to be observed generally of the rules of law, that when "they encounter and cross one another, that it be understood "which the law holds to be worthier and to be preferred; "and it is in this particular very notable to consider that "this being a rule of some strictness and rigour, doth not,  

(e) 1 Robinson's Adm. Rep. pp. 89, 90.
as it were, its office but in the absence of other rules, which are of some equity and humanity" (f).

XCVIII. It should be observed that the question as to the judicial proofs of the acts of a Foreign State is now, so far as England is concerned, regulated by statute (g). The 14 & 15 Vict. c. 99, s. 7, enacts, "All proclamations, treaties, and other acts of State of any foreign State, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any Court of Justice in any foreign State or in any British colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, either by examined copies or by copies authenticated as hereinafter mentioned, that is to say, if the document sought to be proved be a proclamation, treaty, or other act of State, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the foreign State or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any foreign or colonial Court, or an affidavit, pleading, or other legal document filed or deposited in any such Court, the authenticated copy to be admissible in evidence must purport either to be sealed with the seal of the foreign or colonial Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the judge, or, if there be more than one judge, by any one of the judges of the said Court, and such judge shall attach to his signature a statement in writing on the said copy that the Court whereof he is a judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be ad-

(f) Maxims of the Law, Regula III.
(g) As to former law, see Richardson v. Anderson, 1 Campbell, p. 65, n. (a).
“mitted in evidence in every case in which the original
document could have been received in evidence, without
any proof of the seal where a seal is necessary, or of the
signature, or of the truth of the statement attached thereto,
where such signature and statement are necessary, or of
the judicial character of the person appearing to have made
such signature and statement.”

XCIX. The effect of war, and of the subsequent restora-
tion of peace upon the continuing force and validity of
Treaties, contracted previously to the breaking out of the
war, will be considered hereafter (h).

The reader will find in the note (i) a reference to some of

(h) Vol. iii. ch. ii.

(i) Cases from the English Reports.

Report of Sir Leoline Jenkins (December, 1668) on the Construction of
The Diana, 5 Robinson’s Adm. Rep. p. 60.
In the same case, ib. p. 67.
The Fama, ib. p. 106.
The Zacheman, ib. p. 152.
The Charlotte, ib. p. 305.
The Eliza Ann, 1 Dodson’s Adm. Rep. p. 244.
The Molly, ib. p. 394.
The Ringende Jacob, 1 Robinson’s Adm. Rep. p. 89.
Richardson v. Anderson, 1 Campbell, 65, u. (a).

There are besides some cases on the Construction of Extradition and
International Copyright Treaties.

Cases from American Reports.

Society v. New Haven, 8 Wheaton, p. 404.
The St. I. Indiana, 2 Gallison’s, p. 268.
Whitaker v. English, 1 Bay, p. 15.
Hutchinson v. Brock, 11 Massachusetts, p. 119.
the principal cases decided in the British and American Courts of Law, involving the interpretation and construction of Treaties.

The Pizarro, 2 Wheaton, p. 227.
The Santissima Trinidad, 7 Wheaton, p. 283.
Bolchos v. Three Negro Slaves, Bee's Admiralty, p. 74.
British Consul v. Ship Mermaid, ib. 69.
Henderson v. Poindexter, 12 Wheaton, p. 530.
McNair v. Ragland, 1 Devereux's Equity, p. 516.
Orser v. Hoag, 3 Hill, p. 79.
Miller v. Gordon, 1 Taylor, p. 300.
Ware v. Highton, 3 Dallas, p. 190.
Hamytons v. Eaton, Martin, p. 79, and see especially the following cases, as to the construction of the Treaties between Spain and England of 1762 and 1783, giving privileges to vessels to cut mahogany, and the construction of the proclamation and by-laws relative to the trade under them, Graham v. Pennsylvania Ins. Co. 2 Washington's C. C. p. 113.

Under the second article of the Treaty with Great Britain of 1794, the precincts and jurisdiction of a port are not to be considered as extending three miles in every direction, by analogy to the jurisdiction of a country over that distance of sea upon its coasts, but they must be made out by further proof.—Jackson v. Porter, Paine, p. 457.

The fourteenth section of the Spanish Treaty of 1795, which prohibits citizens of Spain or of the United States from taking commissions to cruise against either of those countries, does not extend the prohibition to public ships of war.—The Santissima Trinidad, 7 Wheaton, p. 283.

No form of passport having been annexed to the seventeenth article of the Spanish Treaty of 1795, the immunity intended by that article never took effect.—The Amiable Isabella, 6 Wheaton, p. 1.

The United States, by their alliance with France, existing in 1780, were not considered as parties in the capitulation made by the Marquis de Bouillé with the inhabitants of Dominica.—Miller v. The Resolution, Bee's Adm, p. 404.

Where individual rights vest under a Treaty, the meaning of the Treaty, in respect to them, is to be construed by the same rules as private contracts.—Anderson v. Lewis, 1 Freeman's Chancery, p. 178.

When a Treaty makes no special provision for deciding questions of individual identity, they must be decided by the judicial tribunals of the country.—Stockton v. Williams, Walker's Chancery, p. 120.

Savigny has a chapter on those Foreign Codes which contain specific enactments as to the Interpretation of Law.—R. R. i. s. 61. Ansprüche der neueren Gesetzbücher über die Auslegung.
PART THE SIXTH.

CHAPTER I.

RIGHTS OF SOVEREIGNS.

C. It was observed in an early part of this work (a) that there were certain subjects of International Law, which, though only to be accounted as such mediately and derivatively, required a separate consideration; and it was said that these subjects of International Law were the following individuals, who are said to represent a State:—

1. Sovereigns.
2. Ambassadors.

And another class of public officers, not clothed, accurately speaking, with a representative character, but who occupy a quasi diplomatic position—namely,

3. Consuls.

We have now to consider the International Status of Sovereigns with respect to themselves and their families.

Cl. The Sovereign (b) represents in his person the

(a) Vide ante, vol. i. p. 10.
(b) Vattel, l. iv. c. 7, s. 108; l. ii. c. 3, c. 4.

Grotius places the exterritoriality of Ambassadors upon this ground:—

"Ut qui sicut fictione quodam habentur pro personis mittentium, ita etiam fictione simili constituerentur quasi extra-territorium."—L. ii. c. xviii. 4, 5.

Puffendorf, De Jure Nat. et Gent. l. viii. c. 4, 21.

Rynkershoek, De Foro Legatorum, c. 3. "Princeps in alterius Imperio quo jure censeatur, quod ad forum competens." C. 4.—"Principis bona
collective power of the State. His person, as such representative, is the subject—by a custom, which, to say the least, approaches the border of positive law—of certain international rights. The recognition of his title and claims as the de jure ruler of the nation, of which he is the de facto governor, and the principles of International Law applicable thereto, have been already considered (c).

CII. The Sovereignty of the State may be vested in a single individual, as in a monarch, a stadtholder, or a president; or in more than one, as in the Consuls of ancient Rome, or of republican France at the beginning of this century; or in various persons exercising the powers of regency pending the minority of the Sovereign (d).

The Roman Law expresses the rule of International Law upon this subject—“Magistratus municipales, cum unum magistratum administrent, etiam unius hominis vicem sustinent” (e).

CIII. Before we enter upon the discussion of the personal prerogatives incident to the Sovereign in a foreign country, it must be remembered that the honour and independence of nations are affected by the treatment of their Sovereign (f).

in alterius Imperio, an per arrestum forum tribuant.” These two chapters contain the best dissertation on this subject.

Zouch, De Jure Felicis inter Gentes, p. ii. s. 2, q. 6.—“Utrum Prin-

ceps in alium Principem in suo territorio imperium habet ?”

Günther, ii. 473, præsertim, ss. 4, 5, 6.

Martens, l. v. ss. 164–175.

Klüber, ss. 48–50.

Heffters, ss. 48, 58.

Felix, s. 209.

The subject of exterritoriality is again discussed under the subsequent title of Ambassadors.

(c) Vide ante, ch. iv.

(d) “Einem wirklichen Mitregenten oder souveränen Reichsverweser

gebühren mit Ausnahme der Titel gleiche Rechte wie dem eigentlichen

Souverän selbst.”—Heffters, l. vi. s. 55.

(e) Dig. L. I, 25.

(f) “Die Unabhängigkeit des Staates kommt auch der Person seiner

Repräsentanten zu: dem Regenten.”—Klüber, s. 48.

Zouch, p. i. s. v. 1, speaking of “Delicta inter eos quibuscum Pax
The Sovereign is entitled to International rights belonging to his *public* character, both while resident *at home*, and while commorant *abroad*.

*At home* he has a right—

1. To be addressed by other States according to his proper and accustomed title.

2. To be treated in all communications, unless established usage, or the positive stipulations of Treaty have made a distinction, in all respects on a footing of perfect equality with the rulers of other States.

*Abroad*, the Sovereign *de facto* is entitled to be treated by all public functionaries of another State, in all public communications, with respect; and to have his proper titles assigned to him (*g*). Thus at the conferences held this year in London respecting the Treaty of Paris of March 30, 1856, the plenipotentiary of the King of Prussia claimed to be received as representative of the Emperor of Germany, a title lately conferred on the King. The claim was admitted by the plenipotentiaries of the other powers (*h*).

If he be personally the subject of a libel on his character, or be defamed, he is entitled to the same redress, in the municipal Courts of Justice in the country of the libeller, as any subject of that country. If he were shut out from such redress on the ground of his being a foreigner, or upon any technical ground, he would have just ground of complaint, unless, indeed, satisfaction were extra-judicially afforded to him.

---

*est,* says, “In his delictis primum est cum status iæditur vel personis injuria offertur;” *e. g.*, when the Athenians defiled the statues of Philip.

(*g*) Bluntschi, a. 124: “Le refus de ces titres est considéré, non sans raison, comme une offense, lorsque le nouveau gouvernement peut envisager qu'il existe seul de fait. Le fait que l'empereur Nicolas de Russie n'avait pas employé le terme habituel de ‘frère’ dans une lettre adressée à Napoléon III, a été profondément senti par ce dernier, qui s'en est cruellement vengé; et cependant il n'y avait point ici une violation du droit; il y avait tout au plus une atteinte aux usages des cours, car cette lettre reconnaissait expressément Napoléon comme souverain des Français.”

But he has no just ground of complaint if the sentence, after a fair trial, conducted according to the ordinary law of the country, be adverse to him.

These cases are rarely such as concern the individual character of the Sovereign; they are generally such as concern the collective character of the State, as represented by the Sovereign.

The cases of persons proceeded against for libelling the Emperors Paul and Buonaparte, have been already considered as falling under the latter predicament (i). Plots and conspiracies against a foreign Sovereign ought to be tried and punished by the Courts of the State in amity with that Sovereign in which they are planned (k).

The President of a Republic, when he represents the Republic, is entitled to the same rank and honours as a Sovereign both at home and abroad (l).

The Sovereign who accepts any office, civil or military, in another State, *quoad hoc* submits himself to the authority of that State; e.g. The foreign Sovereigns who served recently in the army of the King of Prussia (m).

CIV. The Sovereign who travels through, or sojourns temporarily, for whatever cause (n), in a foreign State, is entitled to an immunity from the civil jurisdiction therein. Even the private individual under these circumstances, much more the Sovereign, does not become "civis," or even "incola," but remains "advena" (o).

It is not worth while to enter into the discussion whether

---


(k) See *Trial of Bernard for attempted assassination of Napoleon III.*—Ann. Reg. 1858; Law Cases, p. 310.

(l) Bluntschli, ss. 128, 134.

(m) Bynkershoek, c. iii. suggests four:—

1. Ut res suas ipse agat.
2. Ut litem obortam ipse transactione componat.
3. Ut discat ex rationibus alieni imperii quod ad suum transferat.
4. Solius animi et oblectionis gratia.

(o) Mary Queen of Scots, *Hefters*, 106, n. 4.
this immunity be the result of natural law or of established custom.

It is only in more modern times that this _exterritoriality_ has become, as it may now be considered, a settled rule of International Law.

A certain amount of jurisdiction (\(p\)) over the persons composing the suite of Sovereigns seems to be a corollary from this proposition. This jurisdiction is limited in most countries to matters of a _civil_ character.

Martens, following De Real, qualifies the generality of the proposition by these conditions:

1. That the Sovereign has not entered the foreign State clandestinely.

2. That he be an actually reigning Sovereign, or recognised as such by the foreign State.

3. That he have not submitted himself to the jurisdiction, by entering into the military service of the State, or by some equivalent act of implied submission to its authority. These two last exceptions appear to be well founded; in their absence the rule "par in parem non habet potestatem" (\(g\)) prevails, and one Sovereign remains exempt from the civil jurisdiction of another.

CV. With respect to _criminal jurisdiction_, the foreign Sovereign, as a general proposition, is exempt from it. Ex-

\(p\) "Man gestattet ihm daselbst der _civil_ Gerichtbarkeit über seine Gefolge."—_Klüber_, s. 50.

"Fac, principem homicidia et rapinas perpetrare, irrue in quosvis homines, _non suos tantum_," &c.—_Bynk_. c. iii.

"En vertu de cette exterritorialité on accorde aussi à des monarques étrangers la jurisdiction [civile au moins] * sur les gens de leur suite; mais on ne peut leur attribuer le droit d'exercer pendant leur séjour tous les différents droits de souveraineté qui produiraient leurs effets sur l'état où ils se trouvent."—_Martens_, l. 5, s. 172.

* The bracketed words are inserted by the editor, _Pinheiro Ferreira_.

\(g\) Maxim cited by the defenders of Mary Queen of Scots.—_Camden's Elizabeth_ (ed. 1688), b. iii. A.D. 1586, p. 370.

treme cases may be put which would make the rule inapplicable. If, indeed, he should abuse the hospitality of the kingdom, he may be ordered, like a delinquent ambassador, to depart from it without delay.

If he should contrive or perpetrate any offence against the welfare or laws of the country in which he is a guest, International Law would warrant the authorities of that country in preventing the commission of the offence, by placing him under necessary restraint, and in subsequently demanding satisfaction for the injury, at the hands of the country of this delinquent representative.

We may go a step further and say, that his acts of violence may be met by violence, and that if he perish in consequence of the resistance opposed to his unlawful conduct, no maxim of International Jurisprudence is violated.

CVI. But may the delinquent Sovereign, under any circumstances, be rendered amenable to the criminal jurisdiction of a foreign country? It is difficult in a treatise on law to answer a question which is founded upon the supposition that the representatives of the majesty of the law are the criminals to be tried by the law.

If, however, the question must receive a categorical answer, the answer must be in the negative.

(r) "Quare ut extremum est in legato ut jubeatur Imperio excedere, sic et in Principe statuerem, si jus hospitii violet. Sed nec sine cautio-nibus ea res transigenda est. Quid si enim more latronis in vitam, in bona, in pudicitiam cujusque irruat, nec secus atque hostis capta grassetur in urbe. Poterit utique detineri, forte et occludi, quamvis per turbam malin, quam constituto judicio. . . . Si Princeps in alieno Imperio manu agat, vel per se, vel per comites, quin manu repelli possit, non puto dubitandum. Si vero quid machinetur adversus Principem hos-pitam, ejuus Imperium, si alid commune delictum perpetret, satis, puto, fiet rationi et Juri Gentium, si quod hic Jus Gentium est, si jubeatur finibus Imperii excedere, nec amplius turbare rempublicam nostram."—Bynker. c. iii.

(s) Bynkershoek, referring himself for a solution of the difficulties growing out of this subject to "ratio" and "usus" (as the legitimate interpreters of International Law), arrives at this conclusion:—"Quin
The historical precedents which might appear to countenance a contrary opinion are valueless. "Nihil igitur in hoc argumento proficies rebus similibus judicatis," is the just observation of Bynkershoek (t).

CVII. It is obvious, moreover (u), that this class of cases is happily so rare, and the instances cited are so exceptional in their nature, both from their own circumstances and from the periods of history in which they happened, that International Law cannot rely upon them as exponents of usage in this arduous matter, but must guide the inquirer by the reason of the thing applied to the exigency of each particular occurrence.

International Law, like the Civil Law, must pass by, without attempting to bring under exact rules, anomalies which a sudden emergency may create, or to provide remedies beforehand for all imaginable contingencies (x).

The excellent sense of Bynkershoek appears in these, among other concluding remarks upon this subject: "Non adeo frequentes sunt ipsorum, qui imperant, Principum in "alienis Imperiis peregrinationes, minus frequentia crimina "vel debita, quae huic disputationi causam præbere possint, "et, quicquid sit, ob personæ sanctitatem, eo semper temperancimento utimur, ne ob minima queque magnum exemplum "statuamus" (y).

CVIII. The privilege of extrerritoriality is extended to the moveable effects which foreign Sovereigns carry with them.

The common usage of Europe exempts such effects from

---

(t) Bynkershoek, c. iii.
(u) See next chapter, on Embassies.
(x) "Jura constituæ oporet, ut dixit Theophrastus, in his quæ iπι το πλαίσιον accident, non quæ è καραλόγον."—Dig. i. 3, 3.
(y) Bynkershoek, c. iii.
the payment of custom duties and the visitation of custom-
house officers (z). The immunity is further extended by
general comity to goods destined for a foreign Sovereign
or his family in their transit through foreign countries;
though this privilege has sometimes, as in the Treaty of Peace
between Russia and Saxony in 1745 (a), been the subject
of an express stipulation.

As to other private property of a foreign Sovereign, both
moveable and immoveable, it is, according to very high au-
thorities on International Law, liable to arrest, adjudication,
and sequestration by the municipal tribunals, and to the
taxes and imposts of the local government (b).

"Usu gentium invaluit," says Bynkershoek, "ut bona,
quæ Princeps in alterius ditione sibi comparavit, sive
haereditatis, vel quo alio titulo acquisitiv, periude ha-
beantur, ac bona privatorum, nec minus, quam hæc, sub-
jiciantur oneribus et tributis." And, speaking of a
difference of opinion on the point, he adds his approbation
of Hilliger’s Commentary on Donellus (c) as follows: "Sub-
ditum vocat (principem) ratione fori, et executionis, quam
judex forte decrevit in rem sibi subjectam, sive mobilem,
sive immobilem, sive pecuniam, ex quacunque tandem causa
debeatur; utique, si me sequaris, sic ea interpretor" (d).

(z) Bluntschli, s. 138.
(a) Vide Art. 10.
(b) Bynkershoek, who insists strongly upon the liability of the Sove-
reign’s private property to arrest, in the same manner as the property of
any private person, would allow this exception: "Cavendum autem est,
ne res ad injuriam vergat, nec quod inter privatos sumnum jus est, ex
inquis forte Pragmaticorum Decretis, id summa injuria ad Principes por-
rigamus. Ajunt illi, vel rem minimum arresto detentam, sufficere ad
subjectionem fori. Largiamur inter privatos, sic enim obtinuit, sed an
ita Principis equus, per alterius ditionem transiens, poterit includi, ut
causam praebet foro? Si me auctorem sequaris, non poterit, nec quic-
quam magis erit contra præsumptam, si non testatum, mentem Gentium."
—C. iv.
(c) Hilliger ad Donell. l. xvii. c. xvii. lit. A.
(d) Bynkershoek, c. iv.
CIX. Bynkershoek, and Martens (e), who adopts his view, draw no distinction between the moveable and immoveable private property of the foreign Sovereign; and, as far as the reason of the thing and the sentences of the Dutch tribunals are concerned, their opinion seems well founded.

It must be admitted, however, that the comity at least of various nations has adopted this distinction, and, moreover, that it would be placed, with the sanction of eminent jurists, among the rules of positive law.

Not many years before Bynkershoek wrote his treatise, "De Foro Legatorum," the King of Prussia was cited into a Dutch Court as a defendant in the matter of the succession to the Principality of Orange.

He appeared and contested the suit (f), and appealed (A.D. 1716) to the Supreme Court of the Senate, before which he seems neither to have prosecuted nor abandoned his appeal, and yet eventually to have been successful in causing the sentence of the Court below to be reversed (A.D. 1719). Probably, in this case the property was of both a moveable and immoveable description.

The practice of the English Courts, both of Equity and

(e) Martens, l. v. s. 173, quite to the same effect. Bynkershoek overthrows Huber’s opinion to the contrary.—De Jure Civ. l. 3, s. 2, c. 2. n. 21, ad tit. De in Jus Vocandi.

The cases cited by Huber and others, Bynkershoek refers to the comity and humanity of princes exercised on particular occasions.

Klöber, s. 40, confines the liability to immoveable property.

Hefters seems to be of the same opinion; and Huber has been already mentioned.

(f) He was much offended. Bynkershoek says (c. iv.), "Clausula edicti, per campanam, ut fit, populo significata," and which, he gravely says, might as well be omitted when the prince has an ambassador who will receive service of the citation.

"Citation au son du tambour," Martens says, l. v. s. 173, n. (a) but no doubt Bynkershoek’s version is correct.

Gratius, l. ii. c. xviii. 10: "Nec metuendum est quod quidem putant, ne si id juris sit nemo inveniatur qui cum legato contrahere velit. Nam et regibus qui cogi nequenat non desunt credores."
Common Law, has been in favour of the privileged exemption of Sovereigns in all matters of private contract.

In 1844 the Duke of Brunswick filed a bill against the King of Hanover, and the Master of the Rolls held \((g)\) that his Majesty was exempt from the jurisdiction of the Courts in this country for any acts done by him as King of Hanover, or in his character of sovereign prince; but that, being a subject of Her Majesty Queen Victoria, he was liable to be sued in the Courts of this country in respect of any acts and transactions done by him, or in which he might have been engaged \textit{as such subject}; and that in respect of any act done by him out of this realm, or any act as to which it might be doubtful whether it ought to be attributed to the character of sovereign prince or to the character of subject, the same ought to be presumed to be attributable rather to the character of sovereign prince than to the character of subject. And it was also held by the Rolls Court, that in a suit against a sovereign prince who is also a subject, the bill ought, upon the face of it, to show that the subject-matter of it constitutes a case in which a sovereign prince is liable to be sued as a subject.

And in a case in the English Court of Queen's Bench \((h)\), it has been held that no English Court has jurisdiction to entertain an action against a foreign Sovereign for anything done, or omitted to be done by him in his public capacity as representative of the nation of which he is the head; and therefore, in an action entered in the Lord Mayor's Court against the Queen of Portugal "as reigning Sovereign and "supreme head of the nation of Portugal," to recover a debt alleged to be due from the Portuguese Government, and in which a foreign attachment had issued, according to the custom of the City of London, the Court made absolute a


\((h)\) \textit{De Haber v. Queen of Portugal.}

\textit{Wadsworth v. Queen of Spain}, 1851, 17 Q. B., 171.
rule for a prohibition to restrain proceedings in the action and in the attachment. And the same principle was applied where a case was entered in the Lord Mayor's Court against the Queen of Spain, not expressly as reigning Sovereign and head of the Spanish nation, but where it appeared by affidavit that the plaintiff's sole cause of action arose upon a Spanish Government bond, purporting to have been issued under a decree of the Cortes sanctioned by the Regent of Spain, in the name of the Queen, then a minor.

In 1828, the French Court, the Tribunal Première Instance (1re Chambre), upheld the principles which have been stated, in two instances; one, an action brought by a French firm against the Spanish Government (i); another, in which an action was brought by a French company against the Republic of Haïti (k). In both cases judgment was given upon the same principle of International Law, namely, the independence of Foreign Sovereigns.

In the first case, the President Moreau delivered the following judgment:—

"Attendu que le droit de juridiction est une émanation de la souveraineté;

"Attendu que l'art. 14 du Code civil ne peut être appliqué à un souverain étranger, d'abord parce qu'il ne dispose que pour les obligations contractées envers un Français par un individu étranger, et encore parce qu'on ne pourrait l'étendre aux souverains étrangers sans porter atteinte au droit qu'a tout gouvernement indépendant d'être seul juge de ses actes;

"Attendu, en fait, que l'opposition formée par la maison Balguerie entre les mains d’Aguado, a pour cause l'exécution d'un traité passé entre S.M. catholique et cette

---

(i) Affaire de la maison Balguerie, de Bordeaux, contre le Gouvernement espagnol (voir la Gazette des Tribunaux des 19 et 26 avril).
(k) Affaire de MM. Ternaux, Gandolphe, et Compagnie, contre la République d’Haïti (voir la Gazette des Tribunaux du 26 avril).
"maison pour l'affrétement d'un certain nombre de navires destinés à transporter les troupes du gouvernement espagnol;
"Qu'un pareil traité est évidemment un acte d'administration publique et ne peut, sous aucun rapport, être considéré comme un contrat privé;
"Attendu, d'un autre côté, que les deniers, sur lesquels l'opposition a été formée, sont des deniers publics destinés au paiement de l'emprunt royal espagnol, et qui ne pourraient être saisis sans entraver la marche de ce gouvernement;
"Qu'admettre une personne privée à saisir en France les fonds d'un gouvernement étranger, serait violer les principes sacrés du droit des nations, et s'exposer ainsi à des représailles funestes;
"Attendu, enfin, que les jugemens des Tribunaux français étant sans autorité hors du royaume, le gouvernement espagnol ne pourrait pas être forcé de s'y soumettre, et par conséquent de reconnaître la validité du paiement qui serait fait par Aguado;
"D'où il suit que le Tribunal est incompétent.
"Fait mainlevée de l'opposition, etc." (l).

On the 16th April, 1847, one of the French Courts, the Tribunal Civil de la Seine, pronounced a very important judgment on the same subject.

A M. Solon brought an action against Mehemet-Ali, Viceroy of Egypt, for 100,000 francs, alleged to be due to him for his services in founding and superintending a school at Cairo. Mehemet-Ali was very ably defended by M. Odilon Barrot, principally upon the ground that a foreign Government could not, according to the principles of International Law, be sued in an action of this description. The Tribunal

(l) "M. le Président Jarry a prononcé dans l'affaire Ternaux-Gandolphe un jugement semblable et motivé aussi sur l'indépendance des souverainetés."—Gazette des Tribunaux (3 mai 1828).
decided in conformity with this principle, and delivered the following judgment (m):—

"Attendu que selon les principes du droit des gens, les Tribunaux français n'ont pas juridiction sur les gouverne-
mens étrangers, à moins qu'il ne s'agisse d'une action à l'occasion d'un immeuble possédé par eux en France comme particulier, ce qui emporte attribution territoriale et exécu-
tion;

"Attendu qu'en matière de déclinaire le juge doit avant tout consulter les termes de la demande;

"Attendu que l'action de Solon est une action personnelle qu'il motive sur un prétendu engagement, dont la rupture lui aurait causé un préjudice;

"Attendu que toutes les expressions de la demande lui donnent le caractère personnel et révèlent qu'elle est dirigée contre le gouvernement égyptien, et non contre un particulier;

"Attendu que pour apprécier cette demande, il ne faudrait pas examiner un acte particulier ayant pour cause un intérêt privé, mais un acte administratif et gouvernemental, inter-
venu entre un gouvernement et un fonctionnaire, auquel il a été conféré un emploi et une mission dont le demandeur a dû peser les conséquences; qu'il serait en outre nécessaire de rechercher les causes de la rupture qui motive l'action;

"que de pareilles appréciations ne sauraient appartenir à la juridiction française;

"Attendu que la demande ne tend pas seulement à faire valider des saisies-arrêts pratiquées sur des marchandises appartenant soit au gouvernement égyptien, soit à Méhé-
met-Ali personnellement, mais d'abord et avant tout, pré-
judicialement, à obtenir contre ce gouvernement la somme de 100,000 francs de dommages-intérêts;

"Reçoit S. A. Méhémet-Ali opposant au jugement rendu par défaut, le 25 août 1846, et faisant droit, déclare ledit jugement non avenu;

(m) Gazette des Tribunaux du 17 avril 1847.
"Se déclare incompétent sur la demande introduite par "M. Solon, et le condamne aux dépens." (n)

CX. If a dispute arise between two Sovereigns as to the ownership of private property, it is said (o) that the dispute cannot be decided in the municipal tribunal of the State over which either Sovereign presides; and that arrests or executions made by the decrees of such Courts would be, in fact, reprisals, and not civil proceedings. This observation can hardly, however, apply to a case where the property is locally situated in the jurisdiction of either State. In that case, however, much must depend upon the mode in which the judges who try the question are appointed; their entire independence, as in England, of the Crown would be a very material circumstance. Much also might depend upon the mode of conducting the trial, with respect to there being a full opportunity of stating the case, of choosing the advocate, with respect to the latitude allowed to him in the use of every argument considered by him necessary for his client, the adherence to the rules of evidence which are common to all civilised nations, the permission to produce all witnesses deemed necessary by him;—if due regard were paid to all these requirements of justice, it would be difficult to deny the jurisdiction of the State over property situated within its confines, although it might appertain to a foreign Sovereign.

The decision of the tribunal of a third country upon the property in dispute between two Sovereigns, if the jurisdiction of the tribunal was properly founded (forum rei sitae, hereditatis arresti), is held to be binding upon both litigants.

CXI. Nations may, of course, invoke the arbitration of a third country, or may voluntarily submit their claims to the decisions of its tribunals. Spain and Portugal, as we know from the Advocationes Hispanicae of Albericus Gentilis (p), submitted to the decisions of International

(n) See Bluntschi, s. 139.
(o) Martens, l. v. s. 173.
(p) Vide ante, vol. i. 200.
Law pronounced upon their captures in the Admiralty Courts of England.

Whether and how far the armies of a nation may be employed in vindicating the private rights of their Sovereign is a consideration of Public and Constitutional rather than of International Law; but it is quite in accordance with the principles of that law that the national armies should be employed for such an object (⁹).

CXII. The same remark is applicable to the case of injuries affecting the family of the Sovereign. "Le droit des gens," Martens observes (r), "n'est pas violé lorsqu'un souverain embrasse la juste cause des membres de sa famille, dans des cas où il serait en droit de protéger le moindre de ses sujets, ou de prêter le secours sollicité par un prince étranger."

The various domestic ties which, in the course of centuries, have bound together the reigning houses of Europe, have in former times given to them the appearance of a common family, from which all the kings of Europe were descended. The French Revolution, and the events subsequent to it, have greatly effaced this appearance (s). The various customs which form a Code of Regal Comity, the notifications of accessions, births, marriages, deaths; the interchange of presents and congratulatory messages; the reception of foreign powers, the compliments paid to them on their arrival and departure, and on their travel through the

(⁹) Martens, i. v. ss. 173-4.

(r) Ib. s. 174. He refers, in a note, to the instances of—Caroline Matilda in Denmark; Frederica Sophia in Holland; Marie Antoinette in France.

Flussan, Hist. de la Dipl. franç. i. 378; ii. 286. Peace of Ryswick, art. 8, may be consulted for some, among many, instances of the private quarrels of sovereigns supported by their subjects.

(s) "Les liens de parenté ou d'alliance de famille entre les Cours ne donnent aucun rang à leurs employés diplomatiques. Il en est de même des alliances politiques."—XVII. Règlement sur le Rang entre les Agens diplomatiques (19 mars 1815, art. vi.), Acte du Congrès de Vienne, signé le 9 juin 1815.—Martens, Rec. de Tr. vol. x. p. 379.
country, do not seem to deserve any formal commentary in this work.

"On sent," says Martens, who touches lightly upon them, "que tout dépend ici des circonstances, et qu'il n'est pas "question de droit parfait" (t).

CXIII. The personal rights incident to the Sovereign cease by his civil as well as his natural death.

If the Sovereign have abdicated (u) or been lawfully deposed, and his abdication or deposition be recognised by other States, there is no doubt that any privileges accorded to him during his residence in foreign countries depend entirely upon the course which the authorities in those countries deem it expedient to adopt. His legal title to international rights and favours has ceased. This position is not impugned by the case usually cited of Christina, the ex-Queen of Sweden (x). She lived many years after her abdication, and was not only allowed royal honours, but while resident in France put to death with impunity (1657) her chamberlain Monaldeschi: "Quod factum," Bynkershoek says, "Galli quamvis indignabundi, impune transmiserunt "ex impotentia muliebri, dicet alter, alter vero ex Jure "Gentium ut optimum maximumque est" (y). It is clear, however, that Christina was justiciable for this murder before the French tribunals, unless, perhaps, the French authorities had debarred themselves by their previous acknowledgment of her title to the International rights of a Sovereign. In any case, her instant dismissal from the kingdom was the very slightest vindication of the offended law which France should have exacted (z).

---

(t) Martens, l. v. s. 171.
"Europäische Völkersitze aber nicht Rechtspflichten," Klüber justly remarks, s. 49.
(u) Hefters, s. 57.
See the formal instrument of abdication of the Empire of Brazil by Don Pedro, De Garden, Traité de Dipl. iii. 213–18.
(x) De Martens, Causes célé. ii.
(y) De Foro Leg. c. 3.
(z) Mr. Hallam says, "I should be rather surprised to hear anyone
Mary Queen of Scots, at the time of her pretended trial in England, had been de facto twenty years dispossessed of her crown; her son had been acknowledged as King of Scotland by all Europe; she was styled, in her indictment, "Mary, daughter and heir of James V., late King of Scots; "otherwise called Mary Queen of Scots, Dowager of "France:" and if her trial and execution were only impugnable upon the ground of the violation of her rights as a Sovereign, it would be difficult to pronounce these acts a violation of strict International Law. The atrocious guilt of her murder rests upon other grounds, chiefly no doubt upon her forcible detention in England, "in violation" (as Mr. Hallam admits) "of all natural, public, and municipal law."

CXIII (A). It is important, however, to remark, that if a foreign Sovereign become a suitor or a plaintiff in the Courts of another country, he brings with him no privileges which can vary the practice or displace the law applying to other suitors in those Courts; and, therefore, both the Court of Chancery and the House of Lords decided that the King of Spain, though suing as a sovereign prince, and in his political capacity, in an English Court of Equity, was under an obligation, to answer upon oath to a cross-bill filed against him by the defendants to his suit(a); and the same doctrine had before been laid down with reference to a Republican Government, in the case of the Columbia Government v. Rothschild, in which the plaintiffs were described as the "Columbian Government," and their counsel being desired to show who they were, and not being able to do so, the demurrer to the bill was allowed, on the principle

assert that the Parliament of Paris was incompetent to try Christina for the murder of Monaldeschi' (Constit. Hist. chap. iii.); though he offers a stouter defence for Elizabeth than almost any other historian.

See Strype's Annals of the Church, vol. iii. part 1. book ii. pp. 528-537, as to the case of Mary Queen of Scots; the opinion of the Common Lawyers as to the title; the Civilians as to the Law of Nations.

(a) King of Spain v. Hulet and Widder, 1 Clarke & Finnelly, 348 (A.D. 1833).

S. c. in the Court below, 1 Dow. & Clark, 160.
that the plaintiff must describe himself, so that the defendant might come against him by a bill or a cross-bill (b). And in the case of Rothschild v. Queen of Portugal, the Court of Exchequer held that Her Most Faithful Majesty, being a voluntary suitor in an English Court of Law, became subject, as to all matters connected with that suit, to the jurisdiction of the Court of Equity; and was, therefore, compellable to answer to a bill filed against her by persons who were the defendants in an action which she had brought against them, but the plaintiffs in the bill filed against her in the Court of Exchequer (c). Upon the same principle in Prioleau v. United States and Andrew Johnson (d), V. C. Wood decided that the United States of America, suing in the Courts of this country, and thereby submitting themselves to the jurisdiction, stand in the same position as a foreign Sovereign, and can only obtain relief subject to the control of the Court in which they sue, and pursuant to its rules of practice, according to which every person sued in this Court, whether by an individual, by a foreign Sovereign, or by a corporate body, is entitled to discovery upon oath touching the matters upon which he is sued, and to file a cross bill for the purpose of obtaining such discovery.

Proceedings were accordingly stayed in a suit by the United States of America, suing in their corporate capacity, until an answer should have been put in to the cross bill of the defendant.

And in the United States of America v. Wagner (e) the Court of Appeal in Chancery held that, while a foreign sovereign State adopting the republican form of government, and recognised by the Government of Her Majesty, can sue in the Courts of Her Majesty in its own name so recognised, and such a State is not bound to sue in

(b) 1 Simon's Rep. 94 (A.D. 1826).
(c) 3 Young & Collyer's Rep. 594 (1839).
(d) 2 L. R. Eq. Rep. 659 (1866).
(e) 2 L. R. Ch. App. 582 (1867).
the name of any officer of the Government, or to join as co-
plaintiff any such officer on whom process may be served,
and who may be called upon to give discovery upon a cross
bill; nevertheless, the Court may stay proceedings in
the original suit, until the means of discovery are secured
in the cross suit. In the case of the Emperor of Brazil v.
Robinson and others, the Court of Queen's Bench decided
that the Emperor, having engaged in a commercial transac-
tion, and bringing an action thereupon in the Courts of this
country, and being resident out of the jurisdiction, was not
exempted from that necessity of finding security for costs
to which any other person bringing such an action would be
subject (f); and they held this decision to be consistent with
the principle of a former decision in which Lord Ellenborough
had decided that such a privilege of exemption did attach
to an ambassador, who was in this country merely in his
political capacity, and concerning whom there was no reason
to suppose that he was desirous of leaving the country (g),
or going out of the jurisdiction.

The two following cases are important. They relate to the
question of the civil position as plaintiffs of an actual and of
a restored legitimate Government before the tribunals of a
foreign State. In the case of the Emperor of Austria v. Day
and Kossuth (h), Lord Campbell held that the actual
reigning Sovereign of a foreign State in amity with Great
Britain is entitled to sue in the Court of Chancery, and to
obtain an injunction to prevent the issuing of monetary
notes manufactured in England, purporting to be notes of
that foreign State, but having no sanction from its Govern-
ment, if the Court is satisfied that some substantial injury
will thereby accrue to the property of such foreign State,

(f) Emperor of Brazil v. Robinson and others, 5 Dowling's Rep. of
Practice Cases, 522 (A.D. 1837).
(g) The Duke de Montellano v. Christina, 5 Maule & Selwyn's Rep. 503
(A.D. 1816).
(h) 2 Giff. 628 (1861).
VOL. II.
and to that of the plaintiff's subjects, whom he has a right to represent.

Accordingly, monetary notes having been manufactured in this country, purporting to be sanctioned by the State of Hungary, and signed by K., a native of Hungary, resident in England, "in the name of the nation," but which were unauthorised by the existing Government—an injunction was granted to restrain their issue, and they were ordered to be delivered up to be cancelled at the suit of the Emperor of Austria, as King de facto of Hungary.

In the case of the United States of America v. McRae (i). V. C. James held that, upon the suppression of a rebellion, the restored legitimate Government is entitled, as of right, to all moneys, goods, and treasure which were public property of the Government at the time of the outbreak, such right being in no way affected by the wrongful seizure of the property by the usurping Government.

But with respect to property which has been voluntarily contributed to, or acquired by, the insurrectionary Government in the exercise of its usurped authority, and has been impressed in its hands with the character of public property, the legitimate Government is not, on its restoration, entitled by title paramount, but as successor only (and to that extent recognising the authority) of the displaced usurping Government; and in seeking to recover such property from an agent of the displaced Government can only do so to the same extent, and subject to the same rights and obligations, as if that Government had not been displaced and was itself proceeding against the agent.

Therefore, a bill by the United States Government, after the suppression of the rebellion, against an agent of the late Confederate Government, for an account of his dealings in respect of the Confederate loan, which he was employed to raise in this country, was dismissed with costs, in the absence of proof that any property to which the plaintiffs were

(i) L. R. 8 Eq. Rep. 69 (1869).
entitled in their own right, as distinguished from their right as successors of the Confederate Government, ever reached the hands of the defendant, and on the plaintiffs declining to have the account taken on the same footing as if taken between the Confederate Government and the defendant as the agent of such Government, and to pay what, on the footing of such account, might be found due from them.
CHAPTER II.

EMBASSY—ANTIQUITY AND UNIVERSALITY OF ITS RIGHTS.

CXIV. We now approach the subject of Embassies (a), a part of International Jurisprudence which has taken deep root in the practice of nations, and is therefore capable of precise treatment and clear exposition.

The principal rights and duties incident to Embassies have been recognised by all communities at all removed from the condition of savages.

(a) The principal authorities relied on for this subject are—

Albericus Gentilis, De Legationibus, libri tres. The first good work on the subject.

Grotius, l. ii. c. xviii. De Legationum Jure.

Zouch, De Judicio inter Gentes, pars i. iv.: “De questionibus debiti inter eos quibuscum par est—solutio questionis veteris et novae, sive de legati delinquentis judice competente dissertatio.”—Oxon: 1657.

Wicquefort, De Legato, translated by Barbeyrac, 1681. L'Ambassadeur et ses Fonctions, 1746, last ed.

Bynkershoek, De Foro competente Legatorum. This treatise, though not without some characteristic defects of the author, is by far the best that has been written on the subject. Qu. Juriis Pub. l. ii. c. iii.-ix.

Vattel, l. iv. ch. 5, 6, 7, 8, 9.

Martens, l. vii. ss. 185-250.

Klüber, ss. 166-230, c. iii.

Hoffter, B. iii. ss. 193-230.

Münnich, Das Europäische Gesandtschaftsrecht, Leipzig, 1847.


Wheaton, Hist., pp. 48, 51, 95, 232-256, 496.

Felix, Droit Int. Pr., l. ii. t. ii. ch. ii. s. 4.

Wildman, l. c. 3.

Bluntschli, ss. 159-243.
The whole subject may be conveniently discussed under the following general heads:

1. Who may send and receive Ambassadors?
2. Is their reception obligatory?
3. Their Right of Inviolability.
4. Their Privileges of Exterritoriality.
5. May the Ambassador by any, and what, misconduct forfeit his rights and privileges?
6. When the functions of the Ambassador legally cease.

CXV. Every nation, so far sui juris as to be capable of negotiating in its own name with another nation, has the right of sending an Embassy (droit actif—actives Gesellschaftsrecht).

CXVI. Therefore, not only independent States have this, among other jura majestatis, but dependent States, who have not an entire Sovereignty, may possess this right, if the nature of their connexion with the protecting State allows them the liberty of conducting their foreign relations with other States (b).

By the sixteenth article of the Treaty of Kainardgi (c), concluded in 1774 between Turkey and Russia, the Hostodars of Moldavia and Wallachia, placed under the protec-

(b) *Bynkershoek*, Q. J. P., l. ii. c. iii. : "Qui recte legatos mittunt."
Martens, s. 187.

"Qui recte legatos mittunt."

"El derecho de embajada es una regalia que, como todas las otras, reside originalmente en la nación. La ejercen *ipso jure* los depositarios de la soberanía plena, y en virtud de su autoridad constitucional los monarcas que concurren con las asambleas de nobles y diputados del pueblo á la formación de las leyes, y ann los geses ejecutivos de las republicas, sea por sí solos ó con intervencion de una parte ó de todo el cuerpo legislativo. En los interregnos el ejercicio de este derecho recae naturalmente en el gobierno provisional ó regencia, cuyos agentes diplomaticos gozan de iguales facultades y prerogativas que los del soberano ordinario."—*Pando*, tit. cuarto ccxxix.

(c) Klüber, s. 175, n. 6.
tion of Russia, are each entitled to be represented by a chargé d'affaires, being a member of the Greek Church, at Constantinople.

According to Vattel, a State which is under protection, or which has contracted an unequal alliance, has retained, if it have not expressly renounced, the right of Embassy (d).

The Princes and the States of the German Empire, at the time Vattel wrote, although under feudal subordination to the Emperor (quoique (ils) relèvent de l'Empereur et de l'Empire), preserved, in spite of his opposition, their individual right of Embassy, and since the peace of Westphalia have resembled a republic of Sovereigns (e).

CXVII. There is no doubt that confederated States are collectively entitled to the right of Embassy; the question as to the individual right of each member of the Confederation is one of more difficulty.

It may be argued (f) that the sovereignty of each State is not impaired because it has entered into certain voluntary engagements with its neighbours, any more than the independence of an individual is forfeited by his having entered into a voluntary engagement with another individual. But this must, after all, depend, both in the case of the State and of the individual, very much upon the character and nature of the engagements, however voluntarily contracted.

The question can only be answered by reference to the terms and conditions of the union by which the different States are bound together (g).

CXVIII. In the ancient Republic of the Seven United Provinces, the individual States were deprived of the right of Embassy, which was lodged in the assembly of the States-General. Holland and Zeeland, however, had the singular

---

(d) L. iv. c. v. s. 58.
(e) L. iv. c. v. 850.
(f) Vattel, l. i. c. i. s. 10.
(g) Merlin, Ministre public, s. 2, v.
privilege of presenting to the States the Ambassadors designated for England and France. Holland chose one, and Zealand the other.

Holland had also the right of sending a subject of its province, with the embassies from the other States, which were composed of two or three persons.

CXIX. The United States of North America, in their first Federal Act, gave the Right of Embassy to each State to be exercised with the consent of Congress. The President, however, exercised the executive power, nominated diplomatic agents, and concluded treaties. It is clear that foreign nations were exposed to great uncertainty in their relations with such a confederacy; and that the double authority was inconsistent with the object of the Union.

In their second Federal Act this defect was in a great degree remedied. This Act forbids any State to enter into any treaty, alliance, confederation, compact, or agreement with any other State of the Union, or with a foreign State, without the consent of Congress.

Therefore, Mr. Wheaton observes, "The original power of sending and receiving public ministers is essentially modified, if it be not entirely taken away, by this prohibition" (k).

CXX. In both these instances of the Seven United Provinces and of the United States, there was one common centre of authority, in the hands of which the individual members of the Union had lodged the supreme executive power. It followed, therefore, that in that power was the Right of Embassy.

CXXI. In the Swiss Confederation, however, the case was different. Each Canton preserved its right of sovereignty. They had, indeed, annual diets, but these diets constituted no centre of authority. There was no one body or council which represented the Confederacy in its foreign relations. Each of the Cantons, therefore, contracted alliances as they pleased. The Roman Catholic Cantons were

the only allies of France, and at the death of Louis XV.,
the Cantons of Berne and Zurich had contracted a par-
ticular alliance with each other. "Aussi," observes Merlin,
"n'a-t-on jamais douté que chacun d'eux ne jouit du droit
"d'ambassade" (i).

CXXII. According to Vattel (k), there may be towns
which are in subjection to the general authority of the
country in which they are situated, or to some other au-
thority (villes sujette—unter landesherrlicher Gewalt), and
which, nevertheless, enjoy the right of embassy; and he
instances Neufchâtel, and Brienne in Switzerland, which had
the droit de bannière (jus armorum), and as a consequence,
the right of legation; but Merlin, with justice, combats this
position, and says that it betrays that Vattel was a native
of Neufchâtel, and wished to exalt the place of his birth, and
Merlin adds, that a people cannot be sovereign and subject at
the same time; and that though Neufchâtel had great civil
privileges, and had been reckoned among the allies of the
Swiss Cantons, it had no right of legation according to theory,
and that according to practice it had, under the ancien régime,
acted through the Ambassador of Prussia, who by the ninth
article of the Treaty of Utrecht had been recognised as
"souvenir seigneur de la principauté de Neufchâtel et
"Valengin" (l).

CXXIII. The question is often discussed in treatises,
whether an usurper has the Right of Embassy.

The answer must depend upon two considerations:—
1. Whether the country of the usurper has acknowledged
him as the de facto sovereign; 2. Whether the foreign
country has recognised him as such.

France, under Mazarin, for instance, admitted, without
hesitation, the ambassadors of Cromwell, and rejected those
of Charles II. at the Congress of the Pyrenees.

England, in 1641, not long before the occasion just men-

(i) Merlin, Ministre public, s. 2, v.
(k) Vattel, l. iv. c. v. s. 60: "Des villes qui ont le droit de bannière."
(l) Merlin, Ministre public, s. 2, ix.
tioned, admitted the Ambassador of John IV. King of Portugal, though she had previously recognised only the Spanish Ambassador for Portugal (m).

The consideration of this point has been in great measure anticipated in the chapter on Recognition (n).

CXXIV. A Sovereign who has abdicated his throne has no title, de facto or de jure, to the Right of Embassy.

Upon this question all publicists refer to the celebrated case of Leslie, Bishop of Ross, ambassador of Mary Queen of Scots.

CXXV. We have already considered the legal status in England of that unfortunate Princess. The question with respect to the rights of her ambassador in the same country arose in the following manner.

Mary Queen of Scots was allowed, after her unwarrantable detention as a captive in England, to send an ambassador to plead her cause before the commissioners appointed by Elizabeth to try her. She sent Leslie, Bishop of Ross, in 1567. During the period of his embassy, he was twice committed to prison upon the charge of endeavouring to effect a conspiracy in favour of Mary against Elizabeth (o).

It appears from the State Papers of Lord Burleigh, that the English Government propounded to certain civilians the following questions (p).

1. Whether an Ambassador, procuring an insurrection or rebellion in the Prince's country towards whom he is Ambassador, is to enjoy the privilege of an Ambassador?

2. Whether he may not, Jure Gentium et Civili Romanorum, be punished as an enemy, traitor, or conspirator against that Prince, notwithstanding he be an Ambassador?

To these two questions they answered: "Touching these two questions, we are of opinion, that an Ambassador pro-

(m) Merlin, Ministre public, vi. vii.
(n) Vide ante, ch. iv.
(o) Camden's Hist. 113.
(p) Burleigh's State Papers by Murden, 18.
“curing an insurrection or rebellion in the Prince’s country towards whom he is Ambassador, ought not, *Jure Gentium et Civili Romanorum*, to enjoy the privileges otherwise due to an Ambassador; but that he may, notwithstanding, be punished for the same.”

3. Whether, if the Prince be deposed by the common authority of the Realm, and another elected and invested of that crown, the Solicitor or doer of his causes, and for his aid (although the other Prince do suffer such one to be in his Realm) is to be accounted an Ambassador, or to enjoy the privilege of an Ambassador?

To this they answered: “We do think that the Solicitor of a Prince lawfully deposed, and another being invested in his place, cannot have the privilege of an Ambassador; for that none but Princes, and such other as have sovereignty, may have Ambassadors.”

4. Whether a Prince, coming into another Realm, and remaining there under custody and guard, ought, or may have there his Solicitor of his causes; and if he have, whether he is to be counted an Ambassador?

To this they answered: “We do think that a Prince coming into another Prince’s Realm, and being there under guard and custody, and remaining still a Prince, may have a Solicitor there; but whether he is to be accounted an Ambassador, that dependeth on the nature of his commission.”

5. Whether, if such a Solicitor be so appointed by a Prince so flying, or coming into another Prince’s Realm—if the Prince in whose Realm the Prince so in guard, and his Solicitor is, shall denounce, or cause to be denounced, to such a Solicitor or to such a Prince under custody, that his said Solicitor shall hereafter be taken for no Ambassador—whether then such Solicitor or Agent can justly claim the privilege of Ambassador?

To this they answered: “We do think that the Prince to whom any person is sent in message of ambassador, may for causes forbid him to enter into his lands, or when he hath received him, command him to depart; yet so long as
“he doth remain in the Realm, and not exceed the bounds of "an Ambassador, he may claim his privilege as Ambassador, "or Solicitor, according to the quality of his commission.”

This opinion of the English civilians is again referred to in this chapter, when the general subject of the inviolability of the Ambassador is discussed. In the passage which has just been cited, the proposition of International Law appears to be correctly stated; but this, it will be seen, cannot be predicated of the other portions of this celebrated opinion (q).

CXXVI. During the minority of the Sovereign, the Right of Embassy is lodged in the person or persons composing the Regency, or in the minor himself, according to the constitutional law of the country of the Sovereign (r).

In France, during the Regency of the Duke of Orleans, the Cardinal Dubois negotiated the Triple Alliance of La Haye in 1717, by virtue of Credentials, Full Powers, and Instructions, which were given in the name of the King, then a minor.

In England, during the periods in which George III. was incapacitated by mental derangement for the transaction of affairs, the right of sending embassies was vested in the Prince of Wales.

The Republic of Poland, during the vacancy of the elective throne, exercised the Right of Embassy.

CXXVII. The maxim, delegatus non potest delegare, would apply, generally speaking, to cases where the ministers of a State attempted to delegate the Rights of Embassy.

If, however, the minister were armed, either by his original

(q) See Preface to vol. i. of this Work, p. lxvii, et vide post. ch. 5.
(r) Merlin, Ministre public, s. 2, x.
Klüber, s. 176, n. e.

Vattel, l. iv. c. iv. s. 42. Ministres de la Nation ou des Régents dans l’Interrègne: “Le droit d’ambassade, ainsi que tous les autres droits de la souveraineté, réside originairement dans la nation comme dans son sujet principal et primitif. Dans l’interrègne, l’exercice de ce droit retombe à la nation, ou il est dévolu à ceux à qui les lois ont commis la régence de l’état. Ils peuvent envoyer des ministres, tout comme le souverain avait accoutumé de faire, et ces ministres ont les mêmes droits qu’avoient ceux du souverain.”
commission or by powers subsequently conferred, to appoint a delegate minister, it would be clearly competent to him to exercise the authority.

After the death of Gustavus Adolphus at Lutzen, in 1632, the Senate at Stockholm devolved the whole Government upon the Chancellor Oxenstiern.

He nominated the illustrious Grotius as ambassador to France, giving him credentials in his (the Chancellor's) own name. Richelieu, who then governed France under Louis XIII., refused to receive Grotius, on the ground that he ought to have received his commission from the Senate. The Chancellor, however, demonstrated to Richelieu, that on this principle of rejection certain treaties entered into between France and Sweden would be affected; whereupon Grotius was received, but, as Wicquefort observes, as ambassador of Sweden, and not of the Chancellor who had given him his commission, and in virtue of the procuration of the Senate (s).

Some time afterwards the Spanish ambassador nominated certain public ministers to carry on the negotiations of the Treaty of Munster. In their commission, he recited that, by the full power granted to him by the King of Spain, he (the ambassador) was authorised to substitute (subrogare) other persons for the purpose of assisting him in the execution of his office. Wicquefort remarks, that these ministers were received as the plenipotentiaries of the Crown of Spain, and not as the delegates of the ambassador (t).

CXXVIII. The Viceroy of a province, especially of a distant province, has always been held, ex necessitate rei, to possess the Right of Embassy (u).

---

(s) Merlin, Ministre public, s. 2. x.
Wicquefort, 1. i. s. 3.
(t) Merlin, Ib.
Wicquefort, 16.
(u) Merlin, Ibid. Various instances are cited by him, viz., in 1524 1562, 1577, 1588, to which, no doubt, many others might be added.
Vattel, 1. iv. c. v. s. 61, ascribes the jus legationis without hesitation
During the period when Spain governed Naples by a Viceroy, Milan by a Governor, and Belgium by a Governor-General, the right to confer upon others the *jus legationis* was frequently exercised by these high delegates of their Sovereign, and generally without controversy (x); though in 1646 the French ambassador in Switzerland succeeded in persuading the Cantons to refuse an audience at their General Assembly to the ambassador of the Governor of Milan, on the ground that this ambassador had no credentials from the Crown of Spain (y).

During the time that Belgium was in the possession of Austria, foreign diplomatic agents were sent to reside at Brussels, the seat of the Governor-General’s authority.

CXXIX. The same necessity and reasons have very generally caused the power of imparting the *jus legationis* to be granted to the European Governors of American or Asiatic dependencies.

The British Governor-General of India, the Spanish Governor of the Philippines, and the Dutch Governor of Java, are examples which readily occur.

The great Companies of European States, such as the Dutch, the French, and the British East Indian Companies, have often possessed this power (z). But this authority cannot be presumed; it must be conferred by the special and express grant of their respective Governments (a).

to viceroys:—“Agissant en cela au nom et par l’autorité du souverain qu’ils représentent, et dont ils exercent les droits;” and he expressly affirms that the Viceroy of Naples, the Governors of Milan and the Pays-Bas, had this power.

(x) Queen Elizabeth in 1569, having possessed herself of money sent from Spain to the Duke of Alva, refused to treat with the Duke’s legate, “utpote misso a non princepe.” But Bynkershoek truly says, “satis eo ipsa Regina ostendit frivola se exceptione uti, quam sumum cuique reddere malsisse.”—*Q. J. P. l.* ii. c. iii.

Zouch, t. ii. 4, s. 7: “An qui imperium summum non habent legatos nittere possunt.”

(y) Merlin, Ib.

(z) Bynkershoek, *Q. J. P. l.* ii. c. iii.

(a) Merlin, Ib.
CXXX. International Law, strictly speaking, is not concerned with cases of rebellion. There is no doubt that rebellious subjects are not entitled to the *jus legationis* in their communications with their Sovereign; the foundation of the right is wanting. Nevertheless, when rebellion has grown, from the numbers who partake in it, the duration of it, the severity of the struggle, and other causes, into the terrible magnitude of a civil war, the emissaries of both parties (b) have been considered entitled to the privilege of ambassadors so far as their personal safety is concerned (c). "In hoc eventu,"

(b) Bynk. 1. ii. c. iii. would allow the *jus legatorum* to the Sovereign only, at least until he be overthrown, and he cites with approbation two instances from Tacitus:—1. In which Cerealis sent the legate of the rebellious Batavi to Rome to be punished (l. iv. *Ibid.* c. 75); 2. In which Vitellius and the senate sent ambassadors to Vespasian, who, he says, coming from those who were at that time *sui juris*, were entitled to the "*sacrum legatorum jus*" whereas Vespasian's ambassadors would have been *rebellorum nuncii*. A third instance is that of Louis of Bavaria, in 1327, who seized the legates of the Pisans, "qui ipsum in urbem suam recipere detrectabant." Bynkershoek's own opinion is thus expressed: "Ut legatio pleno *jure utrimque* consistat, status *utrimque* liber desideratur, qui si ab una duntaxat parte liber sit, ab ea missi tantum *jure legatorum* utuntur, ab alia missi ad externum principem, habentur pro nunciis, ad suum, pro subditis, sic ut in eos princeps exercere possit id *jus*, quod in reliquis subditos exercet. —Scissa in factiones republca, interesse putem, penes quam partem stat rei agendi potestas, si penes unam ut ante stetit nec alterum ad res agendas desideretur consensus, etiam hae sola recte legatos mittit, et his competit quicquid veris legatis."

(c) Merlin, 16. xii.

*Bynkershoek*, however, observes (Q. J. P. l. ii. c. iii.): "Sed non æque constant, si subditis forte vel rebellis ad principes suos legates mittant."—He instances the ambassadors from the Netherlands in 1566, put to death by Philip II., and admits that this act was specified in 1581 as one of those which caused the final rejection of the Spanish dominion. Wickefort, however, he says, is right (l. i. s. 2.) in saying that Philip was justified *jure stricto* in this deed; that the reason which founds the security of ambassadors is that, being the subjects of another Sovereign whose interests they are bound to represent, they do not by embassy lose their character and become subjects of the Sovereign to whom they are sent; and that this reason was wanting in the case of the rebels, who were, and remained, subjects of Philip; he admits, however, that the *legatorum jus* might have been, and in 1609 was, granted to them.
Grotius says, "Gens una pro tempore quasi due Gentes "habetur" (d). Peace and order, under these circumstances, can only be restored, the shedding of blood can only be stayed, through the medium of negotiation: negotiation must be carried on through negotiators, and negotiators cannot act unless their personal security be guaranteed (e). So far as the State herself, in which the rebellion has broken out, is concerned, it must always be a question of circumstances, and incapable of definition beforehand, when the citizen is to be considered as entitled to the privilege of an enemy rather than the punishment of a rebel (f).

When, in the early history of Rome, a Roman colony sent ambassadors to the Senate, they were warned to depart immediately, "ne nihil eos legationis jus, externo, non civi com-
"paratum, tegeret" (g).

And on this ground Cicero argued that the Legati of Antony should not be received (h).

But we read in the Commentaries of Cæsar that during the

(d) Grot. l. ii. b. 18, 2.

"Es costumbre conceder libre tránsito á los ministros que dos Estados envian uno á otro, y pasan por el territorio de un tercero. Si se rehusa á los de una potencia enemiga ó neutral en tiempo de guerra, es necesario justificar esta conducta con buenas razones; y aun sería mas necesario hacerlo así en tiempo de paz, cuando recelos vehementes de tramas secre-
tas contra la seguridad del Estado aconsejasen la aventurada providencia de negar el tránsito á los agentes diplomáticos de una potencia extrangera."

—Pando, tit cuarto ccxxix.

(e) "Verum habetur, justis duntaxat hostibus esse jus legationis, et quod ab aliis aliquando legati admissi sunt, id permisson non in eorum favorem sed boni communi causa cum alias omnia reconciliationis media
tollerentur, multo magis si hujusmodi legatis fides data est ea omnino violanda non est."—Zouch, p. 2, s. 9, q. 16. De Jur. Fec.

(f) Merlin mentions two instances:—1. The negotiation of the Go-

vernment of France through the mediation of England with the Reformers of Languedoc in 1704: a Treaty was signed between the Crown and the rebels, differing only from other treaties in being signed, "très-humble requête des Réformés du Languedoc au Roi." 2. The negotiation with the Vendeans and Chouans.

(g) Liv. l. vi. c. 17.

(h) Phil. v. c. 8.
great civil war of Rome, some such considerations as have been mentioned above had caused the reception by Pompey of emissaries, even from the fugitives and robbers of the Pyrenees; and by Cesar's directions, his officers endeavoured, though in vain, to open a negotiation with Pompey, exclaiming, "Liceret ne civibus ad cives de pace legatos "mittere? quod etiam fugitivis ab saltu Pyrenæo prædoni- "busque licuisset, preseríntim ut id agerent, ne cives cum "civibus armis decertarent" (i).

The great revolutions of the world, such as the Revolt of the Netherlands, and of the British Provinces in North America (k), could only have been prevented from producing a state of perpetual warfare throughout the greater part of the globe, by a partial application of the principle of International Law to the divided members of one and the same State. The importance and necessity of these principles were exemplified in the case of the Trent (l) during the recent Civil War in America.

(i) Cesar, De Bello Civili, l. iii. c. xix.; see too, c. xvii.

(k) See some admirable remarks by Mr. Burke, "On the strange incongruities which must ever perplex those who confound the unhappiness of civil dissension with the crime of treason." He adds: "Wherever a rebellion really and truly exists—which is as easily known in fact as it is difficult to define in words—Government has not entered into such military conventions (e.g., as they had entered into with the revolted colonies in North America); but has ever declined all intermediate treaty which should put rebels in possession of the Law of Nations with regard to war, &c. (Letter to the Sheriffs of Bristol). See, too, his remarks on the shameful violation of the Treaty of Limerick, ratified by King William III., under the faith of which Limerick and other Irish garrisons were surrendered in the war of the Irish Revolution or Rebellion.—Tracts on the Popery Laws, ch. iii. pt. 2.

(l) Among the publications in which this case was discussed will be found:

1. Der Trent-Fall. (Dr. Marquardsen, Erlangen, 1862, Kap. xiii; gives the despatches of foreign ministers.)
3. Dana's note to Wheaton, 644.
4. Notes on some Questions suggested by the case of the Trent.—M. Bernard, 1862.
5. Case of the Seizure of the Southern Envoys, by the author of these commentaries.—Ridgway, 1861.
A screw steamer of war, the San Jacinto, belonging to the North American States, waylaid the English Royal West India Mail steamer in the Bahama Channel on the 8th November, 1861, and brought her to by firing a round shot across her bows. A lieutenant from the San Jacinto boarded her, and afterwards, aided by a large force of sailors with drawn cutlasses, forcibly took possession of Mr. Mason and Mr. Slidell, envoys supposed to be accredited by the Southern States to Great Britain and to France, and of their two secretaries, with certain papers and baggage. The officer in charge of the mail-bags, a commander in the Royal Navy, protested strongly against the insult offered to the British flag, as did the captain of the vessel; and both claimed the envoys as being under the protection of England. The American lieutenant disregarded the protest, seized the men, and suffered the Royal Mail steamer to pursue her voyage (m).

This act was condemned, though upon different grounds, by the Powers of continental Europe as well as by England. England demanded and finally obtained the restitution of the envoys by the United States, though they never admitted that the inviolability of the envoy was the ground of that restitution (n). They insisted chiefly on the exemption of a neutral vessel from search on the high seas.

It was clear upon the principles of Prize Law, admitted equally by the United States and by England, that the taking the envoys out of the neutral ship was unlawful, the State of the neutral ship having a right to demand a formal adjudication in a proper Court upon the guilt or innocence of the ship, inasmuch as, if she were not guilty, by reason of carrying the envoys, the invasion of her deck and the interference with, much more the taking away of, her passengers, was an offence against International Law, for

(n) See Dana's note, before referred to.
which the offenders were liable to the penalty of full costs and damages in the Prize Court; whereas, on the other hand, if the act of the ship were found to be unlawful, it might ensue to her condemnation.

The contention of England was that the Trent was not carrying contraband despatches; and that she was carrying persons whose characters exempted them from the operation of hostilities. The despatches which are contraband are communications from a belligerent to another part of its own kingdom, or to a colony, or to an ally with respect to naval or military operations, or political affairs. These are the kind of despatches which Lord Stowell held (with the approval of American jurists) to be contraband (o). But despatches from a belligerent (as Lord Stowell truly says) to his consul resident in a neutral State may lawfully be carried by a neutral vessel, because the functions of the consul relate to the joint commerce in which the neutral as well as the belligerent is engaged (p). Much less, then, are the despatches of a belligerent to a neutral, relating merely to questions of amicable intercourse between the two States, of the nature of contraband (q). It is manifest that the interests of the neutral may imperatively demand such an intercourse; and it is easily shown that the lawfulness of such intercourse is a necessary consequence from even the limited recognition of a de facto State as a belligerent. A State so far recognised must have organs of communication with the neutral. How is the neutral, for instance, to obtain redress for injuries done to her own subjects? She must have some regular channel—in other words, she must recognise, for this purpose, at least, a Government and a diplomatic officer. But the neutral State has rights beyond this. She is entitled to communicate with all the belligerents for


the purpose of bringing about peace; for a state of war is a
state of unmerited suffering to the neutral, which she is
justified in seeking by all lawful means to bring to an
end.

"It would be almost tantamount" (Lord Stowell says) "to
preventing the residence of an ambassador in a neutral
State, if he were debarred from the means of communicat-
ing with his own." Most clearly, therefore, the despatches
were not of the nature of contraband (r).

(s) The next question is, as to the persons of the envoys. It
would be strange if the living man were treated as contraband
when his despatches were innocent. But it was contended, on
behalf of the United States, that though the envoy was not ex-
actly contraband, he may be seized on his voyage—in transitu,
and these commentaries were cited in support of this opinion.
In these commentaries there are two passages on the sub-
ject—one in which the Author is dealing with the question
of a civil war,—the passage which precedes the observations
which have just been made, and which ends with the remark-
able citation from Grotius, "in hoc eventu gens una quasi
"duae gentes habetur." The Author is here speaking of
emissaries between the parties to the civil war. The argu-
ment is of course still stronger as to emissaries to a third
State. The note, it has been seen, refers to the opinion of
Bynkershoek, which is to the effect that if both parties to
the civil war be de facto independent, they enjoy the full
rights of legation; but if one party be still struggling, and
not yet independent, he enjoys these rights with regard to
third States only. Then follow these words, decisive of
the present question:—"ab alia missi ad externum principem
"habentur pro nunciois (t)." This is exactly the position of law
which was relied upon by England. In the other passage

(r) Case of the Seizure of the Southern Envoys. Pamphlet published by
Ridgway 1861, p. 10.
(s) Seizure of the Southern Envoys—from Pamphlet.
(t) Phillimore—Comment. on Intern. Law, vol. iii. § ccxxi.
of these commentaries, to which alone reference was then made,—the Author is dealing with the subject of contraband, and he uses the very words of Lord Stowell's judgment in the *Caroline*, which legalises the carrying of diplomatic despatches by the neutral vessel. Lord Stowell says:

"It is, indeed, competent for a belligerent to stop the "ambassador of his enemy on his passage; but when he "has arrived, and has taken upon himself the functions of "his office, and has been admitted into his representative "character, he is entitled to peculiar privileges, as set apart "for the protection of the relations of amity and peace, in "maintaining which all nations are, in some degree, inter-
"rested. With respect to this question, the convenience of "the neutral State is also to be considered; for its interests "may require that the intercourse of correspondence with "the enemy's country should not be altogether interdicted; it "would be almost tantamount to preventing the residence of "an ambassador in a neutral State, if he were debarred from "the means of communicating with his own."

Lord Stowell does not here lay down the doctrine, that a belligerent may take an envoy out of a neutral ship. That question was not before him. He founds, chiefly upon Vattel (whom the earlier part of his judgment especially cites), the general *dictum*, that the belligerent may seize the ambassador of another belligerent at a certain period, namely, before he has been accepted by the State to which he is sent; after that event, the belligerent may *not* seize him *anywhere*. Before that event, he may seize him,—but when and where? the reference to Vattel answers the question—when he is passing through his *own* territory. Vattel justifies the seizure by England of a French ambas-
dador, travelling to Berlin through the Electorate of Hanover, *because Hanover at that time belonged to England*. "Non-
"seulement done on peut justement refuser le passage aux "ministres qu'un ennemi envoie à d'autres souverains: on "les arrête même s'ils entreprennent de passer secrètement "et sans permission." Where? "Dans les lieux dont on
"est maitre (u)." Not on board a neutral ship on the high seas. Lord Stowell's judgment must be read by the light of this passage in Vattel, to whom he had referred. Lord Stowell says:—

"The former cases were cases of neutral ships carrying the enemy's despatches from his colonies to the mother country. In all such cases you have a right to conclude that the effect of those despatches is hostile to yourself, because they must relate to the security of the enemy's possessions, and to the maintenance of a communication between them; you have a right to destroy these possessions and that communication, and it is a legal act of hostility to do so. But the neutral country has a right to preserve its relations with the enemy; and you are not at liberty to conclude that any communication between them can partake, in any degree, of the nature of hostility against you.

"The enemy may have his hostile projects to be attempted with the neutral State; but your reliance is on the integrity of that neutral State, that it will not favour, nor participate in such designs, but, as far as its own councils and actions are concerned, will oppose them. And if there should be private reason to suppose that this confidence in the good faith of the neutral State has a doubtful foundation, that is matter for the caution of the Government, to be counteracted by just measures of preventive policy, but is no ground on which this Court can pronounce that the neutral carrier has violated his duty by bearing despatches, which, as far as he can know, may be presumed to be of an innocent nature, and in the maintenance of a pacific connection (x)."

It was not denied in America that this is both the general and the correct law respecting ambassadors; but the conduct of England eighty-two years ago was cited against

(u) Droit des Gens, l. 4, c. 7, s. 85.
It was stated that an English officer, in 1780, took Mr. Laurens, the envoy from the rebel colonies of North America to Holland, out of a Dutch ship, and that he was committed to the Tower as a traitor; but the facts of the seizure were inaccurately stated. Adolphus has a correct epitome of them:

"Meanwhile" (says this historian) "the state of sullen dissatisfaction which occasioned the abolition of the ancient connection between Great Britain and Holland, resolved itself into active hostility; the mystery which had covered the views and conduct of the Dutch was removed; and the Court of Great Britain was impelled to a firm and decisive mode of conduct, as well in resentment of past treachery as with a view to counteract the effects of the neutral league. The Vestal frigate, commanded by Captain Keppel, took, near the banks of Newfoundland, a Congress packet. The papers were thrown overboard; but by the intrepidity of an English sailor, recovered with little damage.

They fully proved the perfidy of the Dutch, who, before the existence of any dispute with Great Britain, had entered into a formal treaty of amity and commerce with the revolted colonies, fully recognising their independence, and containing many stipulations highly injurious to England, and beneficial to her enemies, both in Europe and America. Disagreements on some of the arrangements had occasioned delays in its completion. But Henry Laurens, late President of the Congress, who was one of the passengers in the captured vessel, was authorised to negotiate definitely, and entertained no doubt of success. On his arrival in London, Mr. Laurens was examined before the Privy Council, and, on his refusal to answer interrogatories, committed to the Tower (z)."

(y) In a letter to Mr. Sumner, not, I believe, the Chairman of the Committee of Foreign Relations in Congress.
Adolphus is perfectly accurate in saying that the *Mercury*, commanded by Captain Pickles, was, as the names indicate, an American belligerent vessel. The despatches from Captain Keppel to the Admiralty afford proof of the fact. The vessel was condemned in the Vice-Admiralty Court (commissioned as a Prize Court) in Newfoundland. Laurens was brought to England. The difference between this case and that of the Southern Envoys is obvious. First, despatches were thrown overboard—an act which has frequently enured to the condemnation of a neutral ship; secondly, the ship was not Dutch, and neutral, but American, and belligerent; thirdly, Holland was only professedly neutral, but really belligerent against England, as those very despatches demonstrated. The declaration of war by England against her followed close—namely, on the 20th December, 1780. Fourthly, the ship as well as the man was captured. So clear, indeed, was the justice of the seizure, that neither Holland herself, nor any other State, uttered, then or afterwards, the semblance of a remonstrance against the act. This supposed precedent turns out, then, to be no precedent at all; were it otherwise, International Law is not made out of a single bad precedent, but out of sound principles applied to each case as it arises, and illustrated by consistent practice.

Upon the whole the case of the *Trent* may be considered as having established the proposition that the ambassador of a belligerent cannot be taken from the ship of a neutral upon the high seas.
CHAPTER III.

EMBASSY—RIGHT TO RECEIVE.

CXXXI. States which have the right to send, have the right to receive embassies (a), (droit passif—passives Gesandtschaftsrecht).

The active and the passive right of legation are inseparably connected, and, as will be seen, the rule extends generally to the sending and reception of the same grade of diplomatic agents.

It is said by Klüber and Miruss (b) that dependent States have not necessarily the latter, because they have the former right. But it does not appear on what principle this position is to be maintained, and no authority is cited in support of it. On the other hand, Vattel, Martens, Wheaton, and other writers do not qualify the general principle which has been laid down.

Perhaps, however, where the right to send is exclusively derived from treaty, as in the cases of Moldavia and Wallachia above cited, the right of reception, not being mentioned in the instrument, cannot be inferred as a matter of necessary implication (c).

But, as a general proposition, the right of sending and receiving embassies is inherent in all States; and it therefore follows that to prevent the free exercise, in either way, of this right, would constitute a very heinous violation of

(a) Vattel, l. iv. c. v. s. 57.
Martens, s. 188.
Pando, tit. cuarto.

(b) Klüber, s. 176.
Miruss, s. 80.

(c) Vidc ante, p. 140.
International Law, a crime which, inasmuch as it affected the interests, would justify the interference of all nations on behalf of the one which had been so injured (d).

CXXXII. A State has a right to receive, as it has to send, an embassy; but a State is not under an obligation of duty to send or to receive an embassy.

Upon the consideration of this last point three questions arise, viz.:
1. Is a State bound, as a general proposition, to receive an ambassador at all?
2. Is it bound to receive any ambassador duly commissioned?
3. Is it bound to allow a resident embassy within its territories (legationem assiduam)? (e)

CXXXIII. With respect to the first question, the sound opinion appears to be that a State is bound to give audience to an ambassador, and, except under most extraordinary circumstances (f), to receive him for that purpose within its territories and at its Court.

If, however, such circumstances do exist, some place must be specified—Vattel suggests the frontier—at which the

(d) Vattel, l. iv. c. v. s. 63: "De celui qui trouble un autre dans l'exercice du droit d'ambassade."

"Cuando una nación ha mudado su dinastía ó su gobierno, la regla general es mantener con ella las acostumbradas relaciones diplomáticas. Portaríamos de otro modo sería dar á entender que no reconocemos la legitimidad del nuevo órden de cosas: lo que bastaría para justificar un rompimiento."—Pando, tit. cuarto, cxxix.

(e) Zouch, De Jud. inter Gentes, p. 2, s. 4: "An legatum aliquando admittere non liceat."

(f) Grot, l. ii. c. xviii. s. 3: "Duo autem sunt de legatis quae ad jus gentium referri passim videmus, prius ut admittantur, deinde ne violentur. De priore locus est Livii, ubi Hanno senator Carthaginiensis in Annibalem sic invehitur: 'Legatos ab sociis et pro sociis venientes bonus imperator noster in castra non admisit: jus gentium sustulit,' quod tamen non ita crude intelligendum est: non enim omnes admissi præcipit gentium jus: sed vetat sine causa rejici—causa esse potest ex eo qui mittit, ex eo qui mittitur, et ex eo ob quod mittitur."

Vattel, l. iv. c. v. s. 65: "Sans des raisons très-particulières." 
Wheaton's Elem. ss. 1-261.
ambassador's message must be received. A State may be aware that an ambassador is sent for a mischievous purpose, or, it may be, from a third nation for a purpose conceived to be inexpedient by the refusing State, e.g., reconciliation with another State. In these cases, *ex eo ob quod mittitur*, it may refuse the ambassador.

CXXXIV. With respect to the second question, it may be unhesitatingly answered in the negative. It is in the discretion of the receiving State to refuse the reception of a certain diplomatic agent; but it is not altogether an arbitrary discretion. Some reason must be alleged for the refusal: "Non enim," says Grotius, "omnes admittere præcipit gentium "jus: sed vetat sine causa rejici" (g).

A State cannot reasonably refuse to receive an ambassador on the grounds of sex (h).

---

(g) Martens, s. 199: "Du choix de l'ordre et du nombre des ministres." s. 200: "Du choix de la personne du ministre;" and Pinheiro Ferreira's note on the latter. In this instance his complaint against Martens is just, viz., that he was bound to have expressed his own opinion, and not to have contented himself with a reference to other authorities.

Grotius, note (f), last page.

Bynkershock, Q. J. P. l. ii. c. v.: "Qui recte legati mittantur."

(h) Zouch, De Jure Fec. p. 2. s. 4, Q. 9: "An feminis legationes mandari possint," his opinion is, "sed et quandoque feminas legationibus obseundis maxime idoneæ habitæ sunt:" he relies entirely on authorities drawn from Roman writers.

Merlin, ibid. s. iii.

Bynk. ibid. treats with contempt the argument that women were incapable by the Roman law,—a rule, he says, violated in practice by the Romans, but otherwise of no avail: "nam de suis subditis princeps statuit pro arbitrio suo, de alienis non etiam:" he observes that neither "ratio" nor "usus" exclude women from being diplomatic agents. Not "ratio" "in feminis enim reperies quicquid in legatis jure desideraveris:" not "usus," for Paschalius in Legato, c. xx., has accumulated instances of their employment: he cites passages from Plato, Plutarch, and Tacitus to prove the abilities of women, and makes this curious Dutch pleasantry, "sed ne mulieribus satiæ ut plurimum cristatis, cristos videor erigere, plura non addo."

The passages in the Roman law will be found, Dig. l. iii. t. i. s. i. 5, "(Prætor edicto exceptit) sexum dum feminas prohibet pro alis postulare."
The League of Cambrai in 1508 was signed by Margaret of Austria, in the name of her brother, Charles V. In the same place Louisa of Savoy, mother of Francis, signed a peace, sometimes called Le Traité des Dames.

It is said that, in the reign of Henry IV., France sent an ambassadress to Constantinople. In 1645, Louis XIV. sent la Maréchale de Guebriant to conduct to Poland the Princess des Gouzaques, bride to the King of Poland. Wicquefort says, erroneously, that she was the first female diplomatic agent. The Duchess of Orleans negotiated as Plenipotentiary the Treaty between France and England, which in Charles II.'s time detached the latter country from its alliance with Holland.

"Minus frequentari," (says Bynkershoek) "mulierum legationes res certa est, sed non minus certa, etiam olim minus fuisse frequentatas. Sed plus minusve sint fuerintve frequentatae, jus principis non tollit, ejus igitur voluntas, etiam in hac causa, suprema lex est" (i).

CXXXV. A State may reasonably refuse to receive one of its own subjects as a foreign diplomatic agent, especially if its constitution forbid the subject ever to put off his allegiance.

One very good reason for refusing such a diplomatic agent is the expediency of avoiding the very difficult question which may arise, from a possible conflict between his privileges as a foreign ambassador with his present and former obligations contracted as a subject: for it will be seen that a class of these privileges is founded upon the fact that the bearer of

Et ratio quidem prohibendi est, ne contra pudicitiam sexui congruentem alienis causis se immisceant, ne virilibus officiis fungantur mulieres."

Ib. L. t. 7, s. 4: "Sed et eos, quibus jus postulandi non est, legatione fungi non posse, et ideo in arenam missum non jure legatum esse Divi Severus et Antoninus rescripserunt."

Ib. L. t 17, s. 2: "Femineae ab omnibus officiis civilibus vel publicis remote sunt," &c.

(i) Bynk. De Foro Leg. c. xi. Q. J. P. l ii. c. v.

The "Questiones Juris Publici" were published after the treatise "De Foro Legatorum."
them is not a subject of the country in which he is residing as an ambassador (j).

Bynkershoek (k) is of opinion that no objection exists to the employment of a subject; but he builds his opinion on the proposition that there is no reason why a subject should not serve two masters, or rather be actively the subject of one and passively the subject of another. Yet Bynkershoek himself is obliged to qualify his proposition with the condition that the interests of the two masters do not come into conflict, or that, if they do, the ambassador take no part in them.

In France (l), it has been for some time settled as a constitutional maxim that subjects are not admissible as ambassadors. An exception appears to have been formerly made in favour of the ambassador from Malta. The Swedish Law equally forbids the reception of a subject as a foreign ambassador. The old German Confederation refused upon special grounds to receive any Frankfort Burgher as the representative of any member of the Confederation except of Frankfort itself (m).

(j) England does not allow one of her subjects to act as a diplomatic agent in England. See case of Dr. Stewart, Debates in the House of Commons, June 2, 1871.

(k) De Foro Legatorum, c. xi.

(l) De Caillères, in his Traité de la manière de négocier avec les souverains, speaks of this custom as peculiar to France; but if it ever was peculiar, it is not so now, for such a rule would probably be now adopted by all the Great Powers.—Merlin, ib. v. Bynk. De F. L. c. xi.

(m) Heffters, s. 202. n. 1.

Sir T. Twiss observes (Law of Nations, ii. p. 276):—

"A nation may refuse to receive one of its own citizens as the representative of a Foreign Power, and in some countries it is a state-maxim that a subject is not to be received in such a capacity. Such was the rule of the French1 and Swedish2 courts, and likewise of the United Provinces. But in recent times two French subjects have been accredited to and received by the French court as the Representative Ministers of Foreign Powers—Count Pozzo di Borgo as Minister of Russia, and the Count de Bray as Minister of Bavaria. Ch. de Martens speaks of both these distinguished diplomatists as having been naturalised in the foreign countries which they respectively represented."

1 De Caillères, Traité de la manière de négocier avec les souverains, c. 6, p. 72. 2 Codex Legum Sueciae; tit. de Crimin., § 7. 3 Bynkershoek, de Foro Legatorum, c. ii.
As a State may exercise its right of refusal absolutely, it may also exercise it conditionally.

A State may declare beforehand the terms under which it will consent to receive its own subject as a foreign diplomatic agent. But if the subject be received without any such previously promulgated stipulation he will be entitled to the full *jus legationis*. But this is a point of which the discussion belongs to another place (n).

CXXXVI. That the exile is in any case, though more especially if his return be forbidden by law, subject to the refusal of his own country, cannot be doubted (o); the only doubt is, as will be seen hereafter, whether he can escape, by virtue of his ambassadorial character, punishment in the State which had exiled him, to which he has returned without permission, and therefore with an additional offence.

In 1697, the English ambassador to France obtained permission from the Government of that country to include among his suite certain Frenchmen and refugees on account of their religion, without which permission Bynkershoek thinks France might have claimed them "*ut reversos exules*" (p).

Still more justly may a State refuse to receive a criminal whose sentence is yet unexecuted. A Dutchman condemned to a criminal punishment by the Dutch East India Company fled from India to England, and was sent by the latter country as a diplomatic agent to Holland. Immediately on his arrival at the Hague (1636), the Dutch Company induced the Government to put him in prison, from

---

M. Guizot sent the accomplished and ill-fated Rossi, an Italian naturalised in France, as ambassador to Rome; he justifies this act in his memoirs.

(n) Story's Comment. on the United States, l. 600.

Mirus, s. 83.

(o) Bynk. Q. J. P. l. ii. c. v.

Zouch, p. 2, s. 4.

(p) Q. J. P. l. ii. c. v.
which, however, he was shortly afterwards liberated, chiefly, according to Bynkershoek, because the States General were very anxious at that particular period to be on good terms with England (q).

The fact of the ambassador not being a native of the State which sent him would not alone afford a reasonable cause for refusal. The subject of a third country might be the domiciled citizen of the country which employed him as ambassador, and, even if he were not domiciled, no objection seems to lie against him, on the sole ground of his not being a native.

CXXXVII. The private rank or birth of the ambassador, who is sufficiently ennobled by his Sovereign's choice, can constitute no ground of refusal. The King of Spain employed Rubens as ambassador both to England and Holland (1633). A State, however, would for its own honour justly refuse a notoriously scandalous person, and less justly, but lawfully, any person known to be personally disagreeable to the head of the State (r).

How far the religion of the ambassador can be considered an objection, will be presently discussed (s). It is only necessary to state here that no State is bound to receive a Papal Legate or Nuncio, armed, either by specific instructions or by the general Canon Law, with powers injurious to the Established Church or to the sovereignty of the State over all causes, ecclesiastical as well as civil.

(q) Q. J. P. l. ii. c. v.
Merlin, ib. iv.

(r) Wicquefort, i. s. 13. L'Ambassadeur doit estre agréable. "Le même droit de gens qui ne permet pas qu'on fasse violence ou outrage au ministre qui a esté admis et reconnu, permet aux princes de ne point admettre un ministre dont ils puissent recevoir du déplaisir." Wicquefort gives a catalogue of ambassadors refused on this ground. The Duke of Buckingham, employed by Charles I., might well have been rejected both by Spain and France on account of the insolence and arrogance of his conduct.

(s) Vide post, RELIGION AND THE STATE.
Heffers, s. 200, n. 4.
Miruss, s. 94.
States have a right to refuse the reception of such a minister, or to demand that these powers be limited and defined, so as to be consistent with their safety, before the bearer of them be admitted.

The notification of the refusal to receive ought to be made, if possible, before the ambassador has left his own country, but it may be imparted openly on his arrival, or tacitly by not accepting the letters of credit (t).

CXXXVIII. The existence of a state of war between two nations by no means relieves them from the necessity of receiving each other's ambassadors, not, of course, for the purpose of residence, but of audience. It may be necessary to demand a passport or safe conduct, through the intervention of a third State or of a herald, and what it is necessary to demand may be refused; but the refusal cannot lawfully be grounded on the mere existence of a state of war, for the greater the evil the more stringent is the obligation upon nations to adopt the readiest means of putting an end to it (u), and especially those which are most likely to prevent or stay the shedding of blood.

CXXXIX. We have now arrived at the discussion of the third question propounded, viz.:—Is a State bound to allow a resident embassy (legationem assiduam) within its territories?

The continuous residence of an embassy is, to speak strictly, a matter of comity and not of strict right (x).

(t) Miruss, s. 82.
(u) Vattel, l. iv. c. v. s. 67: Comment on doit admettre les ministres d'un ennemi.
(x) Wheaton, El. 2, 261, 262.
Merlin, ib. s. 3.
Hefferes, s. 200.

Lord Coke, speaking of Henry VII., says, "that wise and politque king would not in all his time suffer Lieger (i.e. resident) ambassadours of any foreign king or prince within his realm, nor he with them; but upon occasion used ambassadours."—4 Inst. 155.

Charles I. expressed resentment against the Dutch for not sending a resident embassy to England.—Wieg. Mém. touch. les Ambassadeurs, 25.

In 1600, a noble member of the Polish Diet complained of the continued
Nevertheless, so long a custom and so universal a consent have incorporated this permission of continuous residence into the practice of nations, that the gross discourtesy of refusing it would require unanswerable reasons for its justification, and would place the refusing in so unfriendly an attitude towards the refused State as to be little removed from a condition of declared hostility.

Grotius, indeed, says, "Optimo autem jure rejici possunt, "quae nunc in usu sunt legationes assiduae, quibus quam non "sit opus (y), docet nos antiquitas cui illæ ignorantæ" (z); but it must be remembered that since this opinion was expressed, a usage of two additional centuries has imparted, according to the principles laid down in an earlier chapter (a) of this work, a character approaching to that of positive law upon this institution of resident embassies.

Vattel (b) therefore declares, that even in his time the

residence of the French ambassador, "que le séjour de l'ambassadeur estoit suspect, parceque les ambassadeurs ont accoustumés de se retirer dès que leur négociation est achevée."

In 1663, an attempt was made by various members of the Diet to send away all ambassadors; it was resisted by the king and senate, but is said to have been one of the chief causes of the dissolution of the Polish Diet.—Wicquefort, l. viii.

(y) The Justinian law was unquestionably adverse to the notion of a resident ambassador. It had no idea of protecting foreign commerce, "pernicium urbibus mercimonium" (Cod. l. iv. t. 63, s. 3.), which it forbade nobles to exercise, and which it conceived might lead to a revelation of the secrets of imperial policy. The Code contains a very curious law, beginning: "Mercatores tam imperio nostro quam Persarum regi subjunctos, ultra ea loca, in quibus fœderis tempore cum memorata natione nobis convenit, mundinas exercere minime oportet: ne alient regni (quod non convenit) scrutentur arcana," &c.—Ib. s. 4.

(z) L. ii. c. xviii. s. 3, 2.

(a) Vide ante, vol. i. chap. v. p. 41.

(b) Vattel, l. iv. c. v. s. 60. Des Ministres résidents. "La coutume d'entretien partout des ministres continuellement résidents, est aujourd'hui si bien établie, qu'il faut alléguer de très-bonnes raisons pour refuser de s'y prêter sans offenser personne."

Miruss, s. 82.

"Hodie tamen ita usurpantur ut sine illis amicitia vix stabilis inter
custom was so deeply rooted as to require excellent reasons for its abrogation by any individual State.

populos diversos coli videatur etsi nec minus usum habeat exploratorum.”
—Huberus de Jure Civili, l. iii. c. xii.

The whole question is well summed up: “Se deben recibir los ministros de un soberano amigo: y dunque no estamos estrictamente obligados á tolerar su residencia perpétua, esta práctica se ha hecho tan general en nuestros días que no pudiéramos separarnos de ella sin muy graves motivos.”—Pando, tit. cuarto, ccxxix.
CHAPTER IV.

EMBASSY—GENERAL STATUS.

CXLI. We have now considered the Rights and the Duties incident to the *sending* and *receiving* of embassies. The next subject for discussion is the *Status* which International Law ascribes to those who are so sent, and to those who are so received.

This *status* is composed of rights *stricti juris*, resting upon the basis of natural law and therefore immutable, and of privileges, originally not immutable, but so rational in their character, and so hallowed by usage, as to be universally presumed, and to become matter of strict right if their abrogation have not been formally promulgated (a case almost inconceivable) before the arrival of the ambassador. The former are usually described under the title of *inviolability*, the latter under the title of *exterritoriality* (a). It is with the former that we are at present concerned (b).

CXLI. The right of sending embassies being estab-

---

(a) The necessity of the case, the usage of foreign writers, the great convenience of the term, will, it is hoped, justify the attempt to naturalise this word.

(b) Vattel, l. iv.c. v. s. 55, ib. c. vii. s. 81, and s. 103. “Nous avons déduit l'indépendance et l'invioalabilité de l'ambassadeur des principes naturels et nécessaires du droit des gens—ces prérogatives lui sont confirmées par l'usage et le consentement général des nations.”

Heffter, s. 204: “eia so von selbst sich verstehendes Recht.” S. 205.

“In der Natur der Sache ist nun ein Mehreres nicht begründet ab.” u. s. w.

Klüber, s. 203: “Den Gesandten räumt theils das natürliche Völkerrecht, theils das positive der Europäischen Staaten besondere Vorrechte ein.” u. s. w.
lished, the personal *inviolability* (*inviolabilitas, inviolabilité, Unverletzbarkeit*) of the ambassador follows as a necessary consequence.

Every foreigner, indeed, is under the protection of the State in which he is commorant, and is so far inviolable.

But this attribute is in a special manner ascribed to the representative of a Foreign State, in whom the image of his Sovereign and the majesty of his country are as it were visibly present; therefore the expression of *sanctity* (*sanctitas, personne sacrée, Heiligkeit*) is often applied by jurists, philosophers and historians, of all ages and countries, as applicable to the bearers of an embassy (*c*).

CXLII. Any offence committed against their person is or ought to be considered by the State as an offence against the State itself (*crime d’État*).

The injury done to an ambassador is not merely an injury done to the Sovereign and country which he represents, but a violation of the common welfare and general safety of all nations.

Therefore there is a peculiarity incident to this right (*d*),

*(c) Grotius, l. ii. c. xviii. s. 1: “Passim enim legimus sacra legationum, sanctimoniam legatorum . . . sancta corpora legatorum.”*  
*Ib. s. iv. 5: “Quare omnino ita censeo, placuisse gentibus ut communis mos, qui quemvis in alieno territorio existentem ejus loci territorio subject, exceptionem pateretur in legatis, ut qui sicut fictionequadam habentur pro personis mittentium, senatus faciem seum attulerat, auctoritatem reipublicae, ait de legato quodam M. Tullius,” &c.*  
*Bynkershoek, De F. L. c. v. De Sanctitate Legatorum, &c.: “Plus scire attinet, qua ratione legati apud omnes, ut dixi, gentes habeat sancti—Et si sanctum id sit, quod ab injuria hominum defensum atque munitum est, ut esse dicit Marcianus in 1. 8. pr. ff. De Rev. Divis., utque ex proprietate verbi deducit Festus in V. sanctum, dicendum videbatur sanctitatem id legatis præstare, ne dicto factove offendere liceat, quia imaginem principis sui ubique circumferunt, quis pacis et foederum nuncii sunt et proxenetis, et sine his gentium societas et beata quies salva esse nequit.”*  
*Vattel, l. iv. c. vii. s. 81 and s. 92: “L’inviolabilité du ministre public, ou la sûreté qui lui est due, plus saintement et plus particulièrement qu’à tout autre étranger ou citoyen.”*  
*Martens, s. 214.  
*Klüber, s. 203.*

(*d*) Whether Vattel be right or not in the application of the principle
viz., that an infringement of it, unlike the invasion of particular national interests, becomes immediately and directly a matter of general international concern, and entitles all nations to demand and enforce atonement for the offence and punishment of the offender.

CXLIII. The atonement and punishment, moreover, are to be measured by a standard different from that which might satisfy an injury done to a private subject (e).

An ambassador, it will be seen, may, with, but not without (f), the consent of his master, waive his privilege of exemption from the local tribunals; but if wrong has been done or an insult offered to him, he cannot appear as a common person demanding satisfaction in a court of justice; he has a right to demand that the State in which he is residing prosecute the wrongdoer as a public criminal (g).

CXLIV. There is another peculiarity incident to this right which requires observation. The Civil Law of Rome expressed a sound principle of jurisprudence, in declaring that it was competent to a person to waive any advantage of the law to the case of the ambassadors of Francis I., put to death by the Governor of Milan, through which city they were travelling to Constantinople, the principle which he lays down is sound and true: "Et comme il n'en donna point de satisfaction convenable, François Ier avait un très-juste sujet de lui déclarer la guerre, et même de demander l'assistance de toutes les nations. Car une affaire de cette nature n'est point un différent particulier, une question litigieuse, dans laquelle chaque partie tire le droit de son côté; c'est la guerre de toutes les nations, intéressées à maintenir comme sacrés le droit et les moyens qu'elles ont de communiquer ensemble et de traiter de leurs affaires."—1. iv. c. vii. s. 84.

"Quiconque fait violence à un ambassadeur ou à tout autre ministre public ne fait pas seulement injure au souverain que ce ministre représente; il blesse la sûreté commune et le salut des nations; il se rend coupable d'un crime atroce envers tous les peuples."—Ib. s. 81.

(e) "Quid igitur est praecipuum in legatis? hoc videlicet, ut in eos, qui legatos male habent, severius animadvertatur, atque ita ob personarum sanctitatem poena atrocius statuatur, quam solet statui in eos, qui privatum quemcunque lesiument."—Bynk. De Foro Leg. c. v.

Mirus, s. 337.

(f) United States v. Benner, 1 Baldwin's (American) Reports, 240.

(g) Vattel, l. iv. c. viii. s. 3.
which had been introduced, for his sake only, into a co-

ventant (h).

The Sovereigns, therefore, of the State may waive the
rights due to them in the person of their ambassadors, but the
ambassadors themselves have no such liberty, because these
rights are not incident to their office for their own private
convenience, but for the honour of their Sovereign, the good
of their country, and the welfare of all nations (i).

This principle is to be found in the Roman Law, even
with respect to the legatus of a subordinate city or province
of the empire. Suits might not be instituted against him:
"Julianus, sine distinctione denegandam actionem. Merito;

(h) Cod. 1. ii. t. 3. De Pactis, s. 29: "Si quis in conscribendo instru-
mento, &c. &c., quare et in hac causa panta non valent, cum alia sit
regula juris antiqui, omnes licentiam habere, his, quae pro se introducta
sunt, renunciare."

(i) Bynkershoek, De Foro Leg., at the end of his xxiii. chapter,
"Legatus an jurisdictionem prorogare et fori privilegio renunciare possit,"
arrives at pretty much the same conclusion as is expressed in the text
here: "Ego vero, quicquid earum rerum sit, non ausim dicere, legatum,
inconsulto principi, juri suo renunciare posse; ad quid enim legatorum
privilegia, quam ut ipsi principibus suis magis utiles sint, et eorum legatio
nulla re impediatur? Magis igitur haec privilegia pertinent ad causam
Principis, quam ipsius legati; sibi renunciatione sua legatus nocere potest,
Principi non potest." Then follows a position doubtfully expressed even
at the time he wrote, and which can now be scarcely admitted at all:
"Atque ita, consulta ratione, forte dicendum est, legatum in causa delicti
unnquam privilegio fori renunciare posse, in causa civili non aliter, quam
ut adversus eum jus dicatur, non ut sententia executioni mandetur, in
quid per eam impediretur legatio, ut in causa criminali tantum non sem-
pere impediri solet. Sed ad manum non sunt ea gentium exempla, ut ex
juro gentium ea de re possim constituere."

For the "ratio," he refers to the passage cited below from the Digest.
In neither case, at the present time, can, it is conceived, the ambassador,
rege inconsulto, forego his right.—De Foro Leg. c. xxiii. in fine.

Vattel, I. iv. c. viii. s. xi.: "Mais si l'ambassadeur veut renoncer en partie
à son indépendance et se soumettre à la juridiction du pays pour affaires
civiles, il le peut sans doute, pourvu que ce soit avec le consentement de
son maitre. Sans ce consentement, l'ambassadeur n'est pas en droit de
renoncer à des privilèges qui intéressent la dignité et le service de son
souverain, qui sont fondés sur les droits du maitre, faits pour son avan-
tage et non pour celui du ministre."
"ideo enim non datur actio, ne ab officio suscepto legationis " avocetur:" (k) and again:—"De (l) eo autem qui adiiit " hæreditatem Cassius scribit, quamvis Romæ adierit hære-
" ditatem, non competere in eum actionem, ne impediatur " legatio: et hoc verum est."

This proposition as to the incompetency of the representative to consent to the renunciation of rights of inviolability belonging to his constituent, is also applicable, by the practice of nations, if not by the reason of the thing, to the renunciation of the privileges of exterritoriality.

CXLV. These rights of inviolability, flowing from the Law of Nature and the reason of the thing, are applicable to all societies, and therefore unalterable by any individual member of the community of nations.

These rights have been acknowledged and respected since the dawn of civilisation in all ages, and are not without vestiges of their recognition even among barbarous tribes.

Grotius, at the outset of his excellent chapter De Legationum Jure, observes that the sanctity of ambassadors, the sacred rights of embassies, the inviolability of treaties, are topics abounding in the works of writers of all ages (m).

(k) Dig. 1. v. t. 1, De Judiciis, &c., s. 24.
(l) Ibid. s. 26.
(m) "Passim enim legimus sacra legationum, sanctimoniam legatorum, jus gentium illis debitum, jus divinum humanumque, sanctum inter gentes jus legationum, foedera sancta gentibus, fœdus humanum, sancta corpora legatorum."—Ib. L. 2. c. 18. s. 1.

De Foro Leg. c. v. in prin.: "Ad satietatem sufficere possunt quæ in hanc rem congeressent:—videlicet, Jacobus Cujacius, l. xi. observ. c. 5. Albéricus Gentilis, De Leg. l. ii. c. 1 & 14. Hugo Grotius (princeps juris publici magister), l. ii. c. 18. s. 1 & 6, in note, adque eum locum tamen non omnes Grotii interpretes."

Wicquefort, l. i. cc. 27, 28.

Montesquieu, De l'Esprit des Lois, l. xxvi. chap. 21.—"Qu'il ne faut pas décider par les lois politiques les choses qui appartiennent au droit des gens.

"Les lois politiques demandent que tout homme soit soumis aux tribunaux criminels et civils du pays où il est, et à l'animadversion du souverain."
Bynkershoek remarks, that all treatises on the *jus legationis* contain an accumulation of passages from Greek and Latin authors upon the inviolability of ambassadors:—"et quo "quis eruditor fuit eo plures auctoritates attulit ad rem, "quam nemo negat, probandum."

In the few observations which follow, it is hoped that the censure of Bynkershoek will not be incurred.

CXLVI. Even the Israelites, being under the peculiar dispensation of the Mosaic law, appear to have acknowledged the inviolability of ambassadors (*n*).

The Egyptians clothed the functions of the ambassadors with a religious character, and are thought by some to have possessed a written code upon the subject; and this code Pythagoras is said to have introduced into Greece. The Greeks (*o*) held in high estimation and invested with religious sanctity the office of ambassadors (*πρέσβεις*); and the inviolability of heralds (*κύρυκες, caduceatores*), who were also priests, appears to have obtained in the earliest periods of their history. It is probable that from the Greeks was derived

"Le droit des gens a voulu que les princes s'envoyassent des ambassadeurs; et la raison, tirée de la nature de la chose, n'a pas permis que ces ambassadeurs dépendissent du souverain chez qui ils sont envoyés, ni de ses tribunaux. Ils sont la parole du prince qui les envoie, et cette parole doit être libre.

"Aucun obstacle ne doit les empêcher d'agir. Ils peuvent souvent déplaire, parce qu'ils parlent pour un homme indépendant. On pouvait leur imputer des crimes, s'ils pouvaient être punis pour des crimes; on pourrait leur supposer des dettes, s'ils pouvaient être arrêtés pour des dettes. Un prince qui a une fierté naturelle, parlerait par la bouche d'un homme qui aurait tout à craindre. Il faut donc suivre, à l'égard des ambassadeurs, les raisons tirées du droit des gens, et non pas celles qui dérivent du droit politique; que s'ils abusent de leur être représentatif, on le fait cesser, en les renvoyant chez eux; on peut même les accuser devant leur maître, qui devient par là leur juge ou leur complice."

(*n*) 1 Chronicles, c. xix.

(*o*) W. Wachsmuth, *Jus Gentium quale obtinuit apud Graecos.*

Alber. Gentilis, c. xvii. *Quadam Graecorum.*
to the Romans the very remarkable institution of the Collegium Feciale.

CXLVII. The concourse of lawless adventurers and freebooters who laid the foundations of imperial Rome, built, out of the resources of their own genius, the chief foundations of their domestic society. The principles of civil obedience, the acknowledgment of the relations of family, the administration of justice, the ordinances of religion, the institution, in fine, of the State, seem, according to the doubtful notices of their early annals, to have found their chief root in their own character, as developed by the exigencies of their condition (p).

This was not the case, however, with respect to the acknowledgment and observance of the rules of right and the principles of justice in their intercourse with other communities. That the necessity of any such rules and principles should, even in the infancy of her existence, have been recognised by Rome, and that this recognition should have been made a part of her constitution, is a fact which distinguishes her from all other nations, and which, at the time, gave early presage of that extraordinary sagacity which characterised her subsequent career. That such necessity should have been felt was most remarkable; that it should have been supplied from without, and not, like the other parts of her constitution, from within—that a regular code of rites and observances, respecting a branch of International Law, should have been at once imported into Rome from a foreign source, is also a circumstance of great peculiarity. The account is given by Livy (q):—"Ut tamen quoniam Numa in pacc religiones instituisset, a se (Anco Martio) bellicae ceremoniae proderentur, nec gererentur solum, sed etiam indicerentur bella aliquo situ, jus ab antiqua gente

---

(p) Geist des römischen Rechts, u. s. w., von Rudolph Hering: Leipzig, 1852.
(q) Lib. I. c. 32.
"Æquicolis, quod nunc Fetiales habent descriptsit quo res "repetentur" (r).

The Fecial institution lasted as long as the free Republic. It withered in the civil wars; and though the name and the title of its chief officer, that of Pater Patratus, existed in the time of the first Cæsars, all trace of both name and thing disappears in the reign of Tiberius.

The office and functions of the ambassador, however, retained the sacred inviolability which had been among the attributes of the Feciales.

(r) "Legati nomen fecialis tenet cum ad foedus feriendum aut indicendum bellum profiscebatur, ad jubendum alicunde aliquem decedere, ad aliquem dedendum."—Alber. Gentilis, l. i. c. 12, De Jure Feciali et Patre patrato.

Grot, ubi sup. s. 10, in fine.

CHAPTER V.

AMBASSADORS—ROMAN LAW.

CXLVIII. (a) It is necessary to notice certain passages relating to the *jus legationis*, which occur in the Digest of Justinian, for two reasons:—First, because, though often misapplied, they have furnished materials for writers on this branch of international jurisprudence. Secondly, because they do contain principles, and, in one instance at least, a direct enactment, applicable to the present subject.

The "legati" mentioned in the Roman Law were not ambassadors from foreign independent States, but delegates (b) from provinces or municipalities subject to the Roman empire. It is to these officers that the passages in the Digest apply, with one very memorable exception. That exception is to be found in the opinion of Pomponius, set forth under the title "De Legationibus." "Si quis" (he says) "legatum hostium pulsasset contra jus gentium id com-
"missum esse existimatur, quia sancti habentur legati: et "ideo cum legati apud nos essent gentis alicujus cum bellum "eis indictum sit, responsum est, liberos eos manere. *Id "enim juri gentium conveniens esse.* Itaque eum qui legatum

---

(a) Bynkershoek devotes a whole chapter to this subject (*De Foro Leg. c. vi.*), which begins, "Quamvis non de Populi Romani, sed de Gentium jurisprudentia agamus, non abs re tamen erit de Jure Romano quaedam praeponuisse, cum qui id audit, vocem fere omnium gentium videntur audire, cumque etiam id jus, quod certa ratione in quibusdam legatis constitutum est, ad omnes alios imprudentia quorumdam traduxerit."

(b) "Tantum non erant procuratores et mandatorii."—Bynk. *ib.*
"pulsâset, Quintus Mucius dedi hostibus, quorum crant "legati, solitus est respondere" (c).

It is impossible to deny that here is a plain and direct incorporation of that important part of International Law which relates to ambassadors, into the Municipal Law of Rome.

But in every other instance the Justinian law respecting "legati" applies, as has been observed, to a class of deputies or delegates from portions of the empire.

With respect to Criminal Jurisdiction, these laws pronounced the legate and the members of his suite to be justiciable at Rome for offences committed during their legation, though for offences previously committed they might claim to be tried at home (domum revocare) (d); and this law was chiefly relied upon by the civilians, as warranting their opinion that Leslie, Bishop of Ross, the Ambassador of Mary Queen of Scots, was justiciable in England for seditious practices committed in that kingdom. This obvious misapplication of the Roman Law has been commented upon by most subsequent jurists (e).

With respect to Civil Jurisdiction, the Justinian laws conferred on legates the privilege of claiming to have civil actions brought against them on account of obligations contracted before the period of their legation, remitted to their domestic tribunal (revocandi domum), on the ground that the business of their legation might be otherwise delayed or impeded (f).

But this privilege was not extended to obligations con-

---

(c) Dig. L. t. vii. s. xvi. de Legationibus.
Tit. lxiii. Cod. de Legationibus.
(d) Bynk. c. vi.
(e) Queen Elizabeth's council were wiser than her lawyers, as Wicquefort observes: "Et de fait" (he adds) "il y a lieu de douter s'ils ne s'étoient point trompés en ce qu'ils répondent sur le premier article : et si les Lois romaines, sur lesquelles ils se fondent, ne doivent pas estre appliquées à ces ambassadeurs, que les villes municipales, ou les colonies romaines, envoyoient au Sénat ou à l'Empereur."—L'Ambassadeur et ses Fonctions, l. i. c. xxvii.; et vide post.
(f) Bynk. ubi supr.
tracted "legationis tempore," on the ground that a facility would otherwise be given them of fraudulently possessing themselves of the property of other persons.

By the Roman Law a person might "domum revocare" actions brought against him at Rome for obligations contracted not at his own home, but "intra provinciam;" but if, being himself the plaintiff, he remitted the cause home, he was compelled in his turn to defend himself there against all actions that might be brought against him.

The Roman Law, however, would not allow the legate to bring such actions, because he could not in his turn, on account of the avocations of his legation, be subject to actions at the suit of others. During the time of his legation, therefore, he could neither be plaintiff, nor agent for another in a civil action—a rule which Bynkershoek is strongly of opinion ought to be adopted by International Law with respect to ambassadors. It is manifestly unjust, he thinks, that an ambassador should be, as by International Law he is, permitted to bring a action, and not be amenable to one brought against himself (g). Upon the same ground, viz., "ne ab officio suscepto legationis avocetur," no action in rem could be brought against a legate, respecting any possession acquired by him previously to his legation.

The Roman Law therefore, relating to legates, bore some resemblance to, and was not without its effect upon, International Law respecting ambassadors; though the circumstances of the legate being the subject of the Prince to whom he was sent, and of his being the deputy from a portion of the same kingdom, materially affected the introduction of the principles of the former into the latter law. "Inter utrosque," (Bynkershoek says) "fuit aliqua similitudo et

---

(g) Vide post, p. 208, &c. Courts of justice have held that a Plaintiff Ambassador is liable to counter-demands in a court of justice, and that a prior assault by a Foreign Minister will excuse a battery committed on him in self-defence.

Vide post, p. 207.
"inde quod de illis prædicatur sæpe et de his prædicari "poterat, at non semper et ubique" (l).

CXLIX. The Christian Church appears to have afforded the earliest instance of resident ambassadors (i), as she probably did of representative assemblies.

We read in the Novells of Justinian of apocrisarii (k), sometimes also called responsales, who seem to have discharged the functions of resident ambassadors for the affairs of the Church at the court (in Comitatu seu Principis curia) at Constantinople.

The right of sending these officers appears, strictly speaking, to have been a privilege of the Patriarchs only, though occasionally exercised by the Archbishop of Ravenna and other Metropolitans. Afterwards, the Apocrisarius or Responsalis was chiefly employed by the Pope at the court of the Emperor.

The Canon Law makes specific mention of the "legatorum

(h) Bynk. c. vi.
(i) Heffters, s. 190.
(k) "Apocrisarius, ambasciatore o procuratore, ἀποκρισάμος, legatus alicujus vel procurator qui pro eo respondet, ab ἀποκρίνομαι, respondeo."
—Forcellini, Lexicon.

Apocrisarius, Du Cange,—a very full and careful account.


See Nov. 6. c. ii. "Ne Episcopus ultra annum extra Ecclesiam suam degat. Et illud," &c. "Propter aea sanctum si quando propter ecclesiasticam occasionem inciderit necessitas, hanc aut per eos qui res agunt sacrarum ecclesiarum (quos apocrisarios vocant) aut per aliqut clerics huc destinatos aut economicus suoi, notam imperio facere, aut nostri administratoribus ut imperat quod competens est," &c. In c.iii. of the same work, "Ne Episcopi ad comitatum Principis accedant absque systaticis literis," the bishops are ordered, "aut per eos qui vocantur Referendarii sanctissimae majoris Ecclesiae (i.e. Constantinople), aut per religiosos Apocrisarios cujusque dioecesos sanctissimorum Patriarcharum suggerere si Imperio," &c.

See also Nov. 123. c. xxv. "De Apocrisariis:" c. xxvi, "Ne Episcopi legationis tempore conveniantur."
“non violandorum religio,” in its enumeration of the subjects about which the *jus gentium* was universally admitted to be conversant (*l*).

The Church, however, was not always able to enforce the observance of this important part of International Law. And among the many deeds of lawlessness (*m*) which disfigure the period usually designated as the Middle Ages, are to be found some (*n*), though not many, violations of the sacredness of the ambassadorial person.

To these violations the Papal claim of universal dominion and the true spirit of chivalry were alike opposed. The Emperor Frederic I. secured the safety of the Papal legates who had misconducted themselves towards him. The oppressive tax upon foreigners, the *droit d’aubaine*, was, even in France, where it long maintained its footing, remitted in favour of the foreign ambassador. The Crusaders scrupulously respected the character of the ambassador, even in their infidel foe.

CL. The infidel was taught by his Koran the sacredness of embassies, though he sometimes interpreted the injunction as being applicable only to Mahometan nations (*o*), and

(*l*) C. ix. Dist. 1. “*Jus Gentium est sedium occupatio, redificatio, munitio, bella, captivitates, servitutes, postliminia, paces, inducia, legatorum non violandorum religio—hoc inde *jus gentium* appellatur quia eo omnes fere gentes utuntur.“

(*m*) *Ward*, l. 280-8.


After all that has been said on this subject, many of the examples cited resolve themselves into cases where *safe conduct* in time of war had not been granted, and where the ambassador was seized in his passage through a third country. The passage cited by *Ward* from Joinville’s *Life of St. Louis*, p. 67, certainly speaks of it being, in the 13th century, the received custom in Christendom as well as heathendom, when war broke out between princes, to detain as a prisoner and slave the ambassador of a prince who happened to die. But this is stated parenthetically, with respect to Christendom, in the account of the Patriarch of Jerusalem being made captive to the Emirs of Egypt, and cannot be taken to be true as a general proposition with respect to the usage of Christian princes.

the Turk for a long time persisted in considering the European ambassador as a tolerated spy in time of peace, and a hostage to be imprisoned at the breaking out of war.

CLI. Lastly, it should be observed, that even during the ages of violence and lawlessness in Europe, it was the principle of the Roman Law, which afterwards took deep root in Christendom, that an injury done to an ambassador should be treated by the Sovereign of the wrongdoer as a crime against the State.
CHAPTER VI.

EMBASSY—EXTENT OF INVOLIABILITY (a).

CLII. It is not probable that it will ever be necessary to draw the line of demarcation in practice between the Rights of Inviolability, founded upon the Law of Nature (jus gentium primærum), and the Privileges of Exterritoriality, founded upon usage and implied consent (jus gentium secundarium), and in most Treatises they are treated of together and with little if any distinction (b).

CLIII. Nevertheless, it concerns the interests of International Jurisprudence, considered as a science, and it may be necessary in practice to establish this distinction. What then are the limits within which this strict Right of Inviolability is circumscribed?

1. To what class of diplomatic agents?
2. To what persons other than the diplomatic agents themselves?
3. To what subject-matter does it extend?
4. At what period of time does it begin?
5. Over what period is it extended?
6. Is it affected by the breaking out of war between the country which sends and that which receives the ambassador?

These are questions which require as precise a solution as the nature of the subject will admit.

(a) Ξέρεις ὅτι ἐφ' ὅμοιος ἵσταταυ λακειαμονίας; καίνοις μὲν γὰρ συγχρίαι τὰ πάντων ἀνθρώπων νομιμὰ, ἀποκτισάντας κῆρυκας, αὐτὸς δὲ ταῦτα ἐν ποιήσει.—Herod. vii. 136.

(b) Miruss, ss. 333–341, is very able and learned upon the point.
First,—The Right of Inviolability extends to all classes of public ministers who duly represent their Sovereign or their State. This may be now considered as an axiom of International Law (c).

Secondly,—The Right attaches to all those who really and properly belong to the household of the ambassador—those who, to use the ordinary description, accompany him as members of his family or of his suite (d).

Such appears to be the best opinion upon this point, though, as will be seen hereafter, it has been a matter of controversy whether this right attaches under all circumstances in an equal degree to the suite as to the ambassador himself (e).

Thirdly,—The Right applies to whatever is necessary for the discharge of ambassadorial functions (f), " nam omnis " coactio (Grotius says) abesse a legato debet, tam que res " ei necessarias, quam que personam tangit, quo plena ei " sit securitas" (g). It seems to follow, therefore, that he is entitled, among other immunities, to an exemption from all criminal proceedings, and to freedom from arrest in all civil suits.

The private effects, and, above all, the papers and correspondence (h) of the ambassador are inviolable.

(c) Vide post as to their privilege of exterritoriality.
(d) Vide post as to exterritoriality.
(e) Vide post, p. 206, and note (n) Sa's case.
(f) Klüber, s. 203. 'Sie erstreckt sich auf alles, was als Bedingung der gesandtschaftlichen Wirksamkeit zu betrachten ist: ganz vorzüglich auf Verrichtung der gesandtschaftlichen Geschäfte.'
Miruss, s. 335.
(g) Grotius, l. ii. c. xviii. s. ix. The Edict of the States General in 1679, which is discussed by Bynkershoek in his ninth chapter (De F. L.), is to the same effect.
(h) "On regarde donc l'ouverture des lettres en temps de paix, de quelque manière qu'elle s'exécute, comme une violation du droit des gens; mais la plus odieuse et la plus honteuse contravention à la foi publique, c'est qu'un gouvernement souffre lui-même un tel abus dans ces bureaux de poste qui ont reçu les lettres avec la taxe sous le sceau du secret."—De Garden, Traité complet de la Diplomatique, vol. ii. p. 86, &c.
The questions as to members of his suite who are subjects of the State to which he is sent, and the franchise of his hotel, are reserved for future consideration.

(i) Fourthly,—The Right attaches from the moment that he has set his foot in the country to which he is sent, if previous notice of his mission has been imparted to it, or, in any case, as soon as he has made his public character known by the production either of his passport or his credentials.

Fifthly,—The Right extends, at least so far as the State to which he is accredited is concerned, over the time occupied by the ambassador in his arrival, his sojourn, and his departure.

(k) Lastly,—The Right is not affected by the breaking out of war between his own country and that to which he is sent. The Porte, indeed, used, under pretence of securing the European ambassador from the effects of popular violence, but in reality in order to retain him as a hostage, to order his incarceration in the prison of the Seven Towns.

(i) Grot. l. ii. c. xviii. s. vi. "Caeterum admissa legatio etiam apud tanto hostes, magis apud inimicos presidium habet juris gentium."

Lattel, l. iv. c. vii. s. 83: "Quoique le caractère du ministre ne se développe dans toute son étendue, et ne lui assure ainsi la jouissance de tous ses droits, que dans le moment où il est reconnu et admis par le souverain à qui il remet ses lettres de créance, dès qu'il est entré dans le pays où il est envoyé, et qu'il se fait connaître, il est sous la protection du droit des gens; autrement sa venue ne serait pas sûre."

Martens, l. vii. c. v. s. 214.
Merlin, v. iii.
Miruss, s. 335.
Heffers, ss. 204. 210.
(k) Klüber, s. 203.
Miruss, s. 336.
CHAPTER VII.

EMBASSY—INVIOLABILITY—CRIMINAL LAW.

CLIV. We have now to consider the very grave and difficult question, whether the inviolability of the ambassador shields him from responsibility to the criminal law of the State to which he is delegated—may he, with impunity, conspire against the Sovereign (crime d'État), or commit outrage on the lives and properties of the subject (delit privé)?

CLV. With respect to criminal offences against the Private Law, these may be of two classes: (1) against the property, (2) or the life of individuals. With respect to the former, the reason of the thing and the nature of the ambassador's function unquestionably demand his exemption from the criminal tribunals of the country.

The Sovereign may, according to the gravity of the offence, signify, in various ways, his displeasure, or demand his recall; but he can neither be punished nor arrested (a).

In 1763, the Ambassador of Holland at the Court of the Landgrave of Hesse-Cassel was accused of mal-administration of a testamentary trust. The Government of Cassel called upon him to render an account, which he refused to do, whereupon he was arrested with a view to obtain from him the necessary documents connected with the trust. But the Landgrave was obliged to send a special embassy to Holland, to make apology and reparation for this infraction of International Law (b).

(a) De Garden, vol. ii. p. 149.
(b) Ibid, pp. 149, 150.
CLVI. With respect to graver offences against the Criminal Law, such as murder, the question is more difficult; but the true proposition of International Law upon this subject is as laid down by Grotius, namely, that the guilty person cannot be tried by the foreign tribunals (c). This doctrine is also supported by Wicquefort (d), Zouch (e), Bynkershoek (f), and Vattel (g).

Great authorities in the English law, Coke (h), Comyns (i), Hale (k), Foster (l), held a contrary doctrine; but Blackstone (m) correctly states that, whatever may have formerly been the opinion, this country follows, as others do, the opinion of Grotius.

CLVII. With respect to crimes against the majesty of the State, such as conspiracies against the Government or the Sovereign thereof, it appears to be now the clear law that no judicial process in the State against which the offence has been committed can be put in motion against the Representative of a Foreign Sovereign.

CLVIII. Such appears to be the best and most generally received opinion. There are not, however, wanting writers who draw a distinction between the commission of mala prohibita and mala in se, and between privata and publica delicta. But the reasons of exemption apply to both cases; namely, first, because the nature of the ambassador’s functions demands the most absolute freedom in every case that

(c) *Grot. l. ii. c. xvii. 4, 5.*  

(d) "Wicquefort (Mr. Ward truly observes) composed his Treatise on Ambassadors to establish this proposition, he being at the time undergoing punishment from Holland, while minister of Luneburgh at the Hague, for betraying the secrets of Holland, in whose service he also was."


(f) *De Foro Leg. c. 17, 18, 19.*

(g) L. ii. ss. 94, 95, 96.

(h) 4th Inst. 15–3.

(i) *Dig. art. Ambassador.*

(k) *Pleas of the Crown*, i. 90.


(m) *Comment. i*. 253, 254.
may arise, 

“securitas legatorum utilitati quæ ex poena est

“preponderat” (n). Secondly, because the ambassador

represents the person of another, and is recognised in that

capacity by the tacit compact by which he is admitted into

the country (o); it has been nobly said: “ils sont la parole

“du Prince qui les envoie, et cette parole doit être

“libre” (p).

It is not meant, however, to convey the impression, either

that the ambassador is to escape without punishment, or that

the State in which he is discharging his functions is power-

less to resist his open violence (q), or to stay his secret

machinations against her public safety (r), or to redress

the rights of a subject whom he may have criminally injured (s).

It is the duty and the right of the injured State, under

these circumstances, to oppose force to force, and in the

event of secret machinations, to secure the person of the

ambassador and remove him from her borders, and in the

case of the privatum delictum, to insist upon his being tried

by the tribunals, or the proper authorities, of his own

country (t).

\(n\) Grot. l. ii. c. xviii. 4.
\(p\) Montesquieu, De l’Espr. des Lois, Pt. II. i. xxvi. c. 21.
\(q\) “Quod si vim armatam intentet legatus, sance occidi poterit,

non per modum poenæ sed per modum naturalis defensionis.”—Grot. 1.

ii. c. xviii. 4. 7.

\(r\) “Pour ce qui est des crimes d’État les mesures les plus sévères à

l’égard d’un envoyé, soit qu’il ait agi d’après les instructions de sa cour

ou spontanément; à la vérité, il n’est pas permis, dans ce cas même,

de lui faire subir une peine corporelle, mais le droit de le faire

arrêter et transporter, sous escorte, hors des frontières, est réclamé sans

opposition par toutes les puissances.”—De Garden, Tr. de Dipl. vol. ii.

pp. 150–1.

\(s\) “Si le délit a causé un scandale public, le Prince porte ses

plaintes au souverain du ministre, demande même le rappel ou la

punition du coupable, et il y a des exemples, qu’en pareille circons-

stance, on a interdit à l’envoyé de paraître à la cour. Si le fait est

avéré, on ne saurait refuser son rappel ou sa punition.”—Ib. 150.

\(t\) Klüber, s. 211.

Stephens’ (Blackstone’s) Comm. ii. p. 498 (ed. 1858).
CLIX. One of the questions put to the civilians in the case of the ambassador to Mary Queen of Scots, which has been already referred to (u), was:

"Whether, if an ambassador be confederate, or aider, or comforter of any traitor, knowing his treason toward that Prince towards whom and in whose realm he pretendeth "to be ambassador, he is not punishable by the Prince in "whose realm and against whom such treason is committed "or confederacy for treason conspired;" and to this they answered, "We do think that an ambassador aiding and "comforting any traitor in his treason toward the Prince "with whom he pretendeth to be ambassador in his realm, "knowing the same treason, is punishable by the same "Prince against whom such treason is committed."

The opinion of the five civilians at first was considered as decisive against the Bishop, but he replied with firmness that he had entered England under a safe conduct, and with the full privileges of an ambassador. Lord Burleigh said that no privilege could protect an ambassador offending against the public majesty of the Prince in whose court he was resident, and that such conduct rendered him liable to a penal action. But the Bishop still insisted upon the privileges of an ambassador, and observed, with equal courage and truth, that they had never been violated via juris sed via facti, never by regular form of trial, but by violence.

He was detained for some time in prison, and then banished from the country, but the Duke of Norfolk and other conspirators were put to death.

This case has formed the text of all future discussions upon the subject of the inviolability of ambassadors. The opinion of Elizabeth’s civilians has been deservedly and generally rejected, by the authority of the best writers, as well as by the practice of the most civilised States (v).

(u) Vide ante, p. 187.
(v) Bynk. De Poro Leg. c. vi.
Case of Mendoza, the Spanish Ambassador (x).

CLX. We now proceed to consider the leading cases in which the doctrine of ambassadorial inviolability has been brought under discussion. In the year 1584, not long after the opinions delivered in the Bishop of Ross' case, Mendoza, the Spanish Ambassador in England, having conspired to introduce foreign troops and dethrone the Queen (y), it was a matter of difficulty how he should be punished. The Government, however, took the opinions of the celebrated Albericus Gentilis, then in England, and of Hottoman in France, who both asserted that an ambassador, though a conspirator, could not be put to death, but should be referred to his principal for punishment; or (according to Hottoman) sent away by force out of the country (z). In consequence of this, Mendoza was simply ordered to depart the realm, and a commissioner sent to Spain to prefer a complaint against him (a).

Case of L'Aubespine, French Ambassador.

CLXI. Three years afterwards there was a conspiracy not only to dethrone the Queen, but to put her to death. The circumstances were these:—L'Aubespine, the French Ambassador, endeavoured to procure the assassination of Elizabeth. For this purpose he tampered, both by himself and secretary, with William Stafford, a man about the Court. Stafford refused to be concerned in it himself, but recommended Moody, a noted ruffian, then in Newgate, to be the instrument. With this man conferences were held by Trappy and Cordalion, both of them secretaries to L'Aubespine. Stafford revealed the plot. Trappy was arrested, and both

(x) The following cases are extracted from Mr. Ward's Law of Nations, vol. ii., and the Causes célèb. by De Martens.
(y) Camden, 296.
(z) Zouch, Solut. Quest. 130.
(a) Camden, ubi sup.
he and *Stafford* confessed the whole before the Council. The ambassador was sent for, but said "he would not hear "any accusation to the prejudice of the privileges of ambas-"sadors." When Stafford was brought in, however, he assented to his knowledge of the matter, but said it was first propounded by him. Stafford, on the contrary, pro-
tested on his salvation that the first he knew of it was from the ambassador. Lord Burleigh then reproached him with the design, yet never thought of *trying* him. All that we can find is, that he bade him beware how he committed treason any more; that the Queen would not, by punishing a bad ambassador, prejudice the good; and that he was not acquitted from the guilt of the offence, though he escaped the punishment (*b*).

---

*Case of one of the Retinue of the Duc de Sully, French Ambassador.*

CLXII. In 1603, the *Duc de Sully*, then Marquis de Rosny, being ambassador at London, one of his retinue quarrelled at a brothel with some English, one of whom he killed. The populace rose, but were quieted by the Lord Mayor, who demanded justice. Justice, however, was not done by the magistrate, but by *Sully* himself, who assembled a council of Frenchmen, condemned the man to death, and not till then delivered him to the civil power. James I. pardoned him, but no attempt was made to *try* him by the English laws, and Sully delivered him up solely for execu-
tion (*c*).

---

(*b*) *Camden, ad an. 1587.*

(*c*) *Mém. de Sull.* t. ii. pp. 191, 192. Another and a very curious question arose out of this case; the French contending that, although James might remit the execution of the man in England, yet, being a Frenchman, and judged by his own tribunal, he could not grant him a pardon.
Case of Inoyosa and Colonna, Spanish Ambassadors.

CLXIII. In the reign of King James I. of England, the Spanish Ambassadors, Inoyosa and Colonna, endeavoured to breed a disturbance in the country, by informing the King that the Duke of Buckingham meant to imprison him by means of the Parliament, and to transfer the regal authority to the Prince of Wales. Both the Court and the Parliament deemed this a scandalous libel, but knew not how to proceed with the ambassadors. Sir Robert Cotton, who was consulted, wrote a tract called "A Relation of the Proceedings against Ambassadors who had miscarried themselves," in which he asserts, "that an ambassador representing the person of a Sovereign Prince, he is by the Law of Nations exempt from Regale Tryale; that all actions of one so qualified are made the act of his master, until he disavow them; and that the injuries of one absolute Prince to another is factum hostilitatis, not treason, so much doth public conveniency prevail against a particular mischief." He then states various examples of ambassadors who have had violence put upon them by way of prevention, rather than punishment; none of them amounting even to a design to try them; and then recommends that some of the chief secretaries should wait upon the Ambassador of Spain, and, by way of advice, desire him to keep his house, for fear of the people; that the Prince of Wales and Duke of Buckingham should complain of the calumny in Parliament; that both Houses should, in consequence, wait upon the ambassador, to request to know the authors of it, in order to try them legally in Parliament; that if he refused, he should then be confined to his house, and a formal complaint sent against him to the King of Spain, requiring such justice to be done upon him as by the leagues of amity and the Law of Nations is usual. If the King refused, it would then be "Transactio Criminis upon himself, and an absolution of all amity, amounting to no less than war denounced" (d). This was

(d) Cotton's Remains.
the opinion of the English Court, complaint was made to the King of Spain, and the ambassador allowed to depart, but without the usual presents (e).

Case of M. de Bass, Minister from France to Cromwell.

CLXIV. In 1654, M. De Bass, Minister from France to Cromwell, was accused of a conspiracy against his life. The Council endeavoured to make him undergo examination, but he refused, saying, that although he would communicate with Cromwell personally, and prove to him that he was not privy to the design, yet he would not submit to interrogatories before a judge; for, being a public minister, he would by so doing offend against the dignity of his master, to whom alone he was accountable for his actions. The Council contented themselves with ordering him to depart the country in four-and-twenty hours (f).

Case of the Ambassador of England at Constantinople.

CLXV. In 1646, the Ambassador of England at Constantinople was summoned by the merchants before the Divan to answer some complaints. The ambassador representing his privilege, the Grand Vizier said, "he was aware " that it was a thing unheard of to summon an ambassador " before the Divan, which would destroy the rights of ambas- "sadors and the Law of Nations." It is true, he was afterwards arrested and sent home, but that being solely owing to the revolution in England, and the arrival of a new minister, does not affect the question (g).

(e) Vicqefont, i. 393.
Wicquefort, i. 396.
(g) Wicquefort, i. 308.
Case of Gyllenburg, the Swedish Ambassador.

CLXVI. On the 29th January, 1717, the Government of England having certain information of a conspiracy to invade the country and dethrone the King, contrived by Gyllenburg (h), the Ambassador of Sweden, at that time at peace with Great Britain, they ordered the arrest of that minister, which was accordingly effected. General Wade and Colonel Blakeney, to whom the charge was intrusted, found him making up despatches, which they told him they had orders to seize; and they even insisted upon searching his cabinet, which, upon the refusal of his wife to deliver the keys, they actually broke open. Gyllenburg complained of these proceedings, as a direct breach of the Law of Nations, and some of the foreign ministers at the Court of London expressed themselves to the same effect, upon which the Secretaries of State, Methuen and Stanhope, wrote circular letters to them, to assign reasons for the arrest, which satisfied them all except Montleone, the Spanish Ambassador, who, in his answer, observed, that he was sorry no other way could be fallen upon for preserving the peace of the kingdom than that of the arrest of a public minister and the seizure of his papers, which are the repositories of his secrets, two facts which seemed sensibly to wound the Law of Nations (i).

This proceeding was, however, clearly justifiable as a measure of self-defence.

Case of the Earl of Holderness.

CLXVII. In 1744, the Earl of Holderness was sent from England as Ambassador to Venice. Passing through the

(h) See a full report of this case in Martens, C. C. i. 75, under the title, "Arrestation du Baron de Görtz, ministre de Charles XII, Roi de Suède, sur la requisiiton de l’Angleterre, en 1717."

(i) Tindal (Contin. of Rapin), b. 28. The proceedings against Gyllenburg are quoted by Bynkershoek to prove his opinion.—De For. Leg. c. xvii.
States of the Emperor of Austria, he was arrested, with his servants, by the Austrian officer in command, on the ground that England, though not at war with Austria, was an ally of her enemies, and that orders had been received to allow no Englishman to pass through that territory. The Earl at last obtained a passport, after signing an undertaking that he would submit himself to the Austrian authority if he should be declared a prisoner of war.

This proceeding was a flagrant violation of ambassadorial rights, and was so considered by Austria, who compelled the officer in command to offer an apology in person to the ambassador (k).

Case of M. Van Hoey.

CLXVIII. After the battle of Culloden, in 1746, the King of France, fearing that the Pretender would be taken and treated as a rebel, persuaded M. Van Hoey, the Dutch Ambassador at his Court (through whose agency certain transactions from time to time had been carried on between the belligerent Courts of London and Versailles), to write to the English Secretary of State for Foreign Affairs a letter, entreating that the life of the Pretender might be saved. This interference was greatly resented by England, and the English Ambassador in Holland obtained, in answer to his remonstrances, a severe letter of reproof from the Dutch authorities to M. Van Hoey, who wrote in consequence an apology to the English minister (l).

Case of Da Sa.

CLXIX. In 1653, Don Pantaleon Sa, brother to the Portuguese Ambassador in England, quarrelled with an Englishman, Colonel Gerhard, about some matter in the New

(l) De Martens, C. C. i. 311.
Exchange; a scuffle ensued, in which Gerhard was severely wounded. The quarrel was renewed the next day, at the same place; but this time Sa came with fifty followers, all armed to the teeth, with the deliberate intention of destroying his adversary. The result was, that many English were wounded, and one person (a Mr. Greenaway) accidentally present, killed; that the Guards were called in, and fired upon by the Portuguese, several of whom they took to prison; the rest, with Sa, took refuge in the hotel of the Portuguese Ambassador. The ambassador was afterwards required to deliver up others of the delinquents, which he complied with, and his brother was among them. He interceded for his brother; but Cromwell resolved, if he could, to try him by the law of the land. He, therefore, consulted the most eminent of the professors of the civil law, to settle how such a barbarous murder might be punished. But these disagreeing among themselves, he left the decision of the affair to a Court of Delegates, consisting of the Chief Justice and two other Judges, three Noblemen, and three Doctors of the Civil Law. Before these Sa was examined. At first he was supposed to be a colleague in the embassy, and he vaunted himself that he was the King's Ambassador, "and subject to the jurisdiction of no one else." He was made, however, to produce his credentials, by which all that could be proved was that the King intended in a little time to recall his brother, and to give him a commission to manage his affairs in England. This being judged insufficient to prove him an ambassador, he was, without any further regard to the privilege of that character, ordered, as well as all the rest, to plead to the indictment.

Such is the accurate statement of the affair till it came to a jury, as it appears from the account of Zouch, a civilian of eminence, and himself a delegate in the cause (m).

(m) Vide Zouch, Solut. Questionis, de Leg. delinq. Jud. Compet. in prof. Su was tried by a jury under a Commission of Oyer and Terminus.—Hale, Pleas of the Crown, i. 90.
It is evident, from this account of the matter, and one of more authority can hardly be met with, that had Sa been actually ambassador, instead of forming part of the suite, the proceedings against him would have been the same with those in the cases cited above. All, therefore, that can fairly be drawn from this precedent, as to the decision of the then existing law of England, is that the suite of an ambassador, if they committed murder, were liable to be tried for it by the Courts of the country. Zouch asserts expressly, that his own opinion upon the main question agreed with that of Grotius and the best authors, as to the exemption of ambassadors themselves; and it should appear, from his Solutio Questionis, that if Sa could have proved that he was an actual ambassador, his plea before the delegates would have been allowed (n).

Conspiracy of Cellamare.

CLXX. The cases which have been hitherto cited have been those in which the representative of England has been a party. They happen to be also among the most important cases on this subject of which there is any record.

There are, however, others in which England was not concerned, and which are of importance for the principle involved in them. Such was the celebrated case of the Conspiracy of the Prince of Cellamare, at the Court of France, in 1718.

The Prince was an ambassador sent to the Court of Spain from the Court of France, by the Cardinal Alberoni,


Mr. Ward remarks that Zouch, in the course of his work, also examines the Bishop of Ross' case, and the opinions of the English civilians upon it, so often cited, and blames those opinions in the most unequivocal terms. It is true, it ought to be observed, that he differs from Grotius in his opinion on the immunity of the suite.

See also, De Réal, Science du Gouv., i. t. v., and De Martens, C. C. ii. 490.
at that time Prime Minister of the latter country. The Prince, under the direction of Alberoni, organised a conspiracy against the existing Government of France; and the fact having been ascertained by that Government, they gave orders for searching the papers of the ambassador in his presence and at his hotel. Certain of these papers they placed under the joint seal of the King of France and of the ambassador. They afterwards selected those which related to the conspiracy, some of which they published in justification of their conduct. None of the ambassadors from the other Courts, then resident at Paris, complained of this act as an infringement of the privileges of their order, though a protest from this body has always been usual when any injury has been done to any member of it resident at the same Court.

The Prince was placed under custody until intelligence was received of the safe arrival of the French Ambassador from Madrid, whom Alberoni had intended to detain. When this intelligence arrived, the Prince was conducted, under military escort, to the frontier.

The next year war was declared between the two countries (o).

CLXXI. It has been held by high judicial authority, that if a foreign minister commit an assault, he is so far deprived of his privilege that battery committed on him by way of self-defence is legal, though even such conduct on the part of a foreign minister will not justify an arrest on process (p).

It is clear that courts of justice cannot enquire whether a person recognised by the Government as a foreign minister was duly appointed as such or not. The recognition of the Government is conclusive upon the judicial tribunal (q).

(o) De Martens, C. C. i. 139.
Courts of law have considered that the reasons which necessitate the inviolability of the person of the foreign minister apply to those of his train or suite, and therefore, that an assault upon, and that threats used towards, a Secretary of Legation are punishable as a criminal violation of International Law (r).

CLXXII. Hitherto the Rights of Inviolability accruing to the ambassador in the State to which he is accredited have been considered, but it must frequently happen that on his way to this State he is obliged to pass through the territory of a third State; and the question arises as to whether he is equally protected and inviolable in this territory (s).

It is clear that the third State may refuse to allow an ambassador a passage through her territory for the same reasons that a State may refuse to receive him.

During the Middle Ages no doubt seems to have been entertained as to the strict legality of seizing the Sovereign or his representative, passing without safe conduct, previously granted, through such dominions. In all the complaints made during the cruel captivity of Richard I. in Austria, by that monarch himself, by the Pope, and by other mediators, it does not appear that it was ever urged that the Duke of Austria had violated the jus gentium, which, so far as embassies were concerned, was certainly well understood by the Canon Law, and must have been familiar to the Pope.

As late as the year 1464, Louis XI. justified the arrest, in France, of the Ambassador from the Court of Brittany, as he was travelling to the Court of England, to which he was accredited, though at the time there was peace between Brittany and France.

Later still, during the Thirty Years' War, Richelieu ar-

(r) Republica r. De Longchamps, 1 Dall. (Amer.) 117. Ex parte Cabrera, 1 Washington (Amer.) C. C. 232.
(s) Vide ante, p. 203, case of the Earl of Holderness.
rested, in France, the Elector Palatine, and subjected him to a very close imprisonment, assigning as a reason "the "right which all nations had to arrest strangers who come "into the country without a safe-conduct" (t).

The ambassadors (u) of Francis I., passing through Milan on their way to Venice and Constantinople, to which they were accredited, were seized and executed by the Governor of Milan, the officer of Charles V. They had, of course, no passport or safe-conduct; but there was a truce subsisting between France and Spain.

Vattel condemns this atrocity, not merely as a wicked murder, which it unquestionably was, but as a scandalous breach of the International Law (contre la foi et le droit des gens) (x), and one which therefore called for the interference of all other States.

CLXXIII. It may be doubted whether these murders were a violation of the jus legationis, though—regard being had to the fact that these ambassadors were travelling through a country with which their master had a truce (y), which is, while it lasts, a peace—the doubt is not very reasonable; but there can be no doubt that it was a shameful infringement of general International Law, the utmost rigour of which would only have authorised temporary incarceration upon strong suspicion.

We pass by the horrible affair of Patkul, to be shunned as a crime, and not cited as an example (z).

(t) In reality to prevent his treating with the army of the deceased Duke of Saxe-Weimar (the leader of a sort of army of freebooters) for the possession of Alsatia.

Ward, i. 275, n. 2, 2, 312, citing Bougeant, Hist. de la P. de Westp. i. 5, 3, 60.

(u) Wicquefort, l. 1, s. 19, p. 433.

Vattel, l. xiv. c. vii. s. 84.

(x) The distinction which Wicquefort would establish between the two is wholly inadmissible. What he should have said was, that the offence was not, under the circumstances, "contre jus legationis." This point is well put in the Traité complet de la Dipl. s. 213.

(y) It is strange that Vattel omits this circumstance.

(z) De Martens, Causes célèbres, t. ii. App. 467.
In 1756, the English seized, in the Hanoverian territory, upon the French Ambassador accredited to Prussia, and conveyed him to England.

In 1793, the Austrians seized, on the Lake of Chiavenna, the French Plenipotentiaries accredited to Switzerland and Naples.

CLXXIV. It has been deemed right to mention these instances of the practice of nations, but the sound rules which ought to govern this question appear to be:—

1. That, in time of peace, the ambassador is of right inviolable in his transit through a third country, but cannot claim the privileges of extraterritoriality as a matter of tacit compact, though they would probably be accorded to him by the courts of all nations—and to ambassadors to a Congress they are accorded. The diplomatic agents of foreign powers at Frankfurt-on-the-Main were allowed the same privileges, on their transit, as the members of the German Confederation (a).

2. That, in time of war, he cannot be secure from imprisonment without a previously obtained permission to pass through the territory; but that his life can in no case be taken, unless, indeed, he actually exercises hostilities in the country through which he passes.

(a) Grotius says, l. ii. c. xviii. 5, 1: "Non pertinet ergo hæc lex ad eos per quorum fines, non accepta venia, transiunt legati, nam siquidem ad hostes eorum sunt, aut hostibus veniunt, aut alloqui hostilia molientur, interfici etiam poterunt . . . multoque magis vinciri." It is, however, impossible to defend the former proposition, and it is certainly not a principle of the existing International Law.

Vattel, l. iv. c. vii. s. 84: "Les autres, sur les terres de qui il passe, ne peuvent lui refuser les égards que mérite le ministre d'un souverain, et que les nations se doivent réciproquement; ils lui doivent surtout une entière sûreté."

Merlin, ib. s. iv. s. v. art. 12.

Wheaton, i. 269: "He is entitled to respect and protection, though not invested with all the privileges and immunities which he enjoys within the dominions of the sovereign to whom he is sent."

Mivuss, s. 305.

Bynkershoek, De F. L. c. ix.

Klüber, s. 176: "Persönliche Sicherheit ist das mindeste worauf als dann der Gesandte Anspruch zu machen hat."
CLXXV. It is a melancholy reflection, that the opinion of Cicero should be in advance of modern and Christian civilisation on this point: "Legatorum jus divino humanoque vallatum præsidio, cujus tam sanctum et venerabile nomen esse debet, ut non solum inter sociorum jura, sed etiam et hostium tela, incolume versatur" (b).

The true International rule would be, that the ambassador should be allowed, in all cases, the *jus transitus innoxii*. This, though Bynkershoek (c) endeavours to misunderstand it, was clearly the law of Holland at the beginning of the eighteenth century. The Mexicans are said to have adopted a similar principle of law; their practice was to mark out a certain route, out of which it was not lawful for the hostile ambassador to deviate.

It is well remarked by Zouch, that both the State which sends the ambassador, and that to which he is sent, are injured by harm or insult inflicted upon him by a third country (d).

---

(b) In *Verrem*, iii.

Bynkershoek, indeed, admits it at first: "Benigna ordinum erga legatos voluntas; vulgo aliquo dici solet, jus legationis non valere nisi inter utrumque principem, qui mittit legatos et ad quem missi sunt, extere privatos esse."—C. ix.

(d) *De Judicio inter Gentes*, p. 2, s. 4, s. 18.

*Fallis, Droit int. priv.* p. 279, contains the enactments in various municipal codes respecting the treatment and protection of ambassadors.
CHAPTER VIII.

EMBASSY—E X T E R T O R I A L I T Y — C I V I L J U R I S D I C T I O N.

CLXXVI. 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 Exterritoriality have been established by the universal consent and custom of all civilised nations, in order to secure the sanctity of the ambassador: they have been thrown up, from time to time, as outworks to the citadel.

The presumption of law, both from the length of the usage and the reason of the thing (testata et præsumptamens gentium), is so strong that, unless due notification of the intention to depart from the established custom had been given, the ambassador would unquestionably be entitled to demand the enjoyment of the exterritorial privileges ordinarily incident to his station.

If, in an evil hour, for its own welfare, such due notification had been given by any State, and nevertheless an ambassador, which is a most improbable hypothesis, had been accredited to it, he would not be entitled to claim, as matters stricti juris, those privileges the denial of which had formed the subject of the notification.

CLXXVII. This proposition, however, must be qualified by two important reservations:—

1. It is not competent to a State, by any notification, under the pretext of curtailing exterritorial privileges, to deprive an ambassador of those privileges which are essential to secure performance of his functions, such, for instance, as appertains to the inviolability of his person.

2. A State so narrow-minded and ill-advised as to refuse the customary exterritorial privileges to the representative of
another State, must take care to act in this matter impartially towards all nations. The nation unfavourably distinguished from others by conduct involving a departure from long usage of the civilised world, would be entitled to consider such unfavourable distinction as a just cause of war.

It is, indeed, not to be imagined for an instant that any other nation would accept this invidious distinction. She would know that, however nominally in her favour, it was really to her detriment, as a member of that community, a part of which cannot be injured without endangering the welfare of the whole.

CLXXVIII. 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 (a), "quantumvis sancta, sola in jus \"vocatione non violatur.\" The Roman Law rightly defined violence, when it said, "vis est et tune, quotiens quis, id, \"quod deberti sibi putat, non per judicem reposcit\" (b). The Priests, the Vestal Virgins, the Tribunes of the People, were sacred and inviolable; but they were amenable to the civil courts of law. The Pontifex was exempt, but only while he was employed in the performance of his holy functions. The ambassador was not, by the reason of the thing (c), therefore exempt from the jurisdiction of the civil courts, which might be so exercised as not to infringe on his inviolability.

CLXXIX. When it had become a custom of universal observance among nations (placuisse gentibus ut communis mos) (d) that the ambassadorial representative should be considered,
"fictione quadam," in the presence itself of the august Principal, the advance was not difficult to another usage, which, "fictione simili," considered the representative as being "quasi extra territorium."

He was a foreigner, and therefore, according to Bynkershoek (e) and other eminent civilians, not amenable to the civil tribunal, except by arrest; and, as an ambassador, he was exempt from arrest. He therefore remained the subject of the power which commissioned him; his domicil was unchanged.

CLXXX. It was a further extension of the fiction of Exterritoriality to render the ambassador's personal property exempt from arrest; this was little more than an application to ambassadors of the rule generally adopted by nations with respect to private foreigners, that their personal effects were considered, as much as their persons, to belong to their domicil.

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 Exterritoriality cannot be applied to immoveable 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 (f). The only question, in

(e) De F. L. c. v. c. viii.
(f) Vattel, l. iv. c. viii. ss. 114, 115.
Miruss, s. 343.

Bynk. De F. L. c. xvi.: "In rem actione legatos conveniri posse, ubi degunt, ubique receptum esse, et neminem, qui vel prolixo legatos defendit, contradicere... idque ideo, quia res ipsa convenitur, neque aliter legatus quam possessor rei, cujus possessio cum probanda sit (l. 9, ff. de Rei vindic.) vix aliter probari poterit, quam ubi res est. Et hoc quidem in fundo, qui viindicatur, dubium non est, contra quam in re, legationis causa luct transducta, vel empta, equo forte," &c.

"Si cet envoyé possède des biens fonds dans ce pays, il y est justiciable des tribunaux pour toutes les affaires qui concernent ses propriétés, suivant la compétence qu'établit le droit civil."—De Garden, Traité complet, l. ii. 144.
such a case, would be the proper way of serving the ambassador with notice of such an action. It has been said that, technically speaking, notice ought to be served upon his domicil, i.e., his residence in his own country; but Bynkershoek (g) justly observes that a letter is at once the most courteous and most effectual way of apprising him of his interest in the legal proceedings.

From this rule with regard to real property is to be exempted the actual dwelling-house of the ambassador (h), which is intimately connected with his personal inviolability.

CLXXXI. 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 (i).

It has been ruled in England that a 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

(g) De F. L. c. xvi. : “Igitur demus hoc legato, ut ejus honoris, quam fieri potest maxime, consultetur, ut et hunc recta in jus vocamus per epistolam, non per ambages, mittendum ad locum pristinae habitationsis, sed ubi nunc est,” &c.

(h) Vattel, l. iv. c. viii. s. 115.
Wheaton, i. p. 279.


Ib. c. xvi. : “Quibus ex causis legatus possit conveniri in loco, ubi legatione fungitur, et quemadmodum tunc facienda sit judicii denunciatio.”

Vattel, l. iv. c. viii. s. 114.
Merlin, ib. s. v., art. vi, vii.
Martiens, s. 217.
Wheaton, i. p. 279.

an action; although such action may arise out of commercial transactions by him here, and although neither his person nor his goods are touched by the suit (k).

Although the courts in this country cannot make an order against an ambassador who does not submit himself to the jurisdiction, yet the Court of Chancery will restrain a third party from handing over to him a fund the right to which is in dispute, notwithstanding his title to the fund may be absolute at law (l).

There may sometimes be difficulty in deciding whether the property belong to him in the capacity of ambassador or merchant, and in all cases of reasonable doubt the ambassador should be allowed the benefit of it. 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 his character of ambassador.

By “money” (Penningen—deniers—pecunia numerata), Bynkershoek says the Court clearly intended to include only money embarked in the particular mercantile speculations; and he adds, that as it must be always difficult to distinguish this money from that which belongs to the ambassador for other purposes, it would be wiser and fairer to omit money, and include it among the things necessarily appertaining to the office of legation (m).

(k) Magdalena Steam Navigation Co. v. Martin, 2 El. & El. 94. (A.D. 1859.)
(m) Ibid. c. xvi.: “Fortasse æquius melius erit, quia in causa dubia, ut hunc est, pro legato solemnis respondere, omnem pecuniam arresto eximere, et hanc referre inter res ad obeundam legationem cum maxime necessarius.”

Ibid. c. xiv.: “Et mihi hujus libelli scribendi occasionem præbuit.”
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."

CLXXXII. In truth, every State ought, by expressly forbidding their ambassadors to combine engagements in private trade or commerce with the sacred duty of representation, to prevent any question of the kind from ever arising. The Roman law on this point deserves to be imitated: "Enim qui " legatione fungitur, neque alienis neque propriis negotiis se " interponere debeat" (n).

It would, however, be perhaps difficult and harsh to prevent the ambassador from acting in the fiduciary character of trustee or testamentary executor; any property accruing to him in these capacities is not within the shelter of extraterritorial privilege.

CLXXXIII. 2. Another exception is furnished by the case of the ambassador who becomes voluntarily a plaintiff in a cause, which act implies the consent of his master. The plaintiff-ambassador makes himself liable to the counter-demands (reconventiones), which are a mode of defence, and to condemnation in costs, if the suit fail (o).

The Roman law says justly, "Qui non cogitur in aliquo " loco judicium pati, si ipse ibi agit, cogitur excipere actiones " et ad eundem judicem mitti" (p).

---

(n) Dig. De Legationibus, l. 50. t. vii. 8.
(o) Bynk. ib. xvi.
Merlin, ib. v. art.x.

(p) Dig. l. v. t. i. 22: "De judiciis et ubi quisque agere vel conveniri debeat."

Bynk. ib. xvi.: "Alia etiam sunt, etiamsi legatos non subditos dicamus, in quibus forum nostrum non recte subterfugerint, quin et in quibus potestas quaedam in eos exercerii poterit, sed ejusmodi potestas, quae nostros cives magis defendat, quam legatos cogat. Multis aucti sunt privilegiis, ut ipsi commodius degant, nec quicquam turbentur in obiunda legatione, non ut, vi illata, alios turbent, et res eorum aufferant. Quod si fiat, fortasse recte utemur iis actionibus, quae interdictionum naturam magis sapiunt, quam jussionum," &c.
On the other hand, if the suit succeed, and the defendant prosecute an *appeal*, which is also a mode of defence, the plaintiff-ambassador cannot decline the jurisdiction of the Superior Court.

CLXXXIV. 3. There is also a kind of *defensive* jurisdiction, so to speak, which may be exercised over ambassadors as over other foreigners—a jurisdiction which has for its object to *prevent* the ambassador from doing some civil injury; namely, the jurisdiction of *interdict*, according to the Roman, and of *injunction* according to the English Law. Such (een Mandament van Complainante an een Mandament van Sausgarde) appears to have been exercised by the Dutch tribunal, in 1644, against the Swedish Ambassador.

CLXXXV. So Albericus Gentilis and Bynkershoek (q) are both of opinion, that the ambassador might, on account of the dangerous condition of his house, or for other causes threatening his neighbour with injury, be subject to that class of actions (r) familiar to the Roman Law, through which the Prætor administered an immediate temporary remedy against an impending wrong. It is clear that the Provincial Legates of Rome were not exempt from this kind of jurisdiction (s); and both the authorities above mentioned conceive that the reason of the thing renders the principle of that law applicable in this particular to modern ambassadors (t).

CLXXXVI. With these exceptions, all civilised nations unanimously accord to ambassadors complete exemption from the civil jurisdiction of the country in which they reside.

These exterritorial privileges are also extended, by positive International Law, as much as the rights of inviolability, to

(q) *Bynk*, ib. xvi.
(r) *Dig*. l. 30, t. 1: "De operis novi nunciatione."
   *Ib*. t. 2: "De damno infecto et de suggrandiis et protectionibus."
   *Ib*. t. 3: "De aqua et aquæ pluvie arcendae."
(s) *Dig*. l. v. t. 1, 28: "Ædium nomine legatus damni infecti promittere debet aut vicinum admittere in possessionem."
(t) "Explorata ratio facit jus istud ab majoribus legatis commune." — *Abb. Gent*, c. xvi. *De contractibus legatorum.*
the family, and especially to the wife, of the ambassador. She is entitled to ceremonial honours, according to the usage of courts, and any affront offered to her is a special indignity to the ambassador: the same remark applies to his family (u). It is not competent to any member of the family to waive this privilege (x). His suite or train (comites) are also entitled to these privileges, a violation of which in their persons affects the honour, though in a less degree, of their chief. In this suite, couriers employed in carrying despatches are of course included.

CLXXXVII. As the privilege is accorded to the suite on account of the ambassador, and not on account of his Sovereign, it may be waived by the former; and it was waived by the ambassadors at the Congresses of Münster and Niméguen (y). But it cannot be waived in the case of any subordinate officer of his household appointed by the Sovereign himself.

(u) Vattel, l. iv. c. ix. 121: "L'épouse de l'ambassadeur lui est intime-ment unie, et lui appartient plus particulièrement que toute autre personne de sa maison. Aussi participe-t-elle à son indépendance et à son inviola-bilité. On lui rend même des honneurs distingués, et qui ne pourraient lui être refusés, à un certain point, sans faire affront à l'ambassadeur."

The children of an ambassador are holden to be subjects of the Prince whom he represents, although born under the protection of, and in the dominions of, a foreign State (Ingls v. Trustees of the Sailors' Snuy Harbour, 3 Peters (Amer.) Rep. 155.

(x) Gazette des Trib. No. 4982, 21 août, 1841. Case of La Baronne de Pappenheim.

Grotius, ib. iv. s. 3.

Wicquefort, i. s. 28.

Bynk, ib. c. xv. De comitibus legatorum. "Ex consuetudine, quæ nunc vicit inter gentes, veri legati (non provinciales et municipales quales fere Rome) domum revocant, tam in contractibus quam delictis. Igítur in utrisque etiam domum revocabunt comites, sive maiores, sive minores, nam et liæ, scoparii, stabularii sequuntur forum legati, ut quicunque sámulus sequitur forum heri suí." According to the Roman Law, the domestics of the legatus were justiciable at Rome, as he was.

Vattel, l. iv. c. ix. s. 120.

Wheaton, i. p. 277.

(y) Wicquefort, i. s. 2s, pp. 423, 424.
CLXXXVIII. The Secretary of Legation being so appointed, is especially, and of his own right, entitled to these privileges (z), and to a certain right, his appointment being notified to the Minister of Foreign Affairs. The Secretary to the Embassy, though unfavourably distinguished from the other in these particulars, has been usually considered as an official person distinct from the general suite (a). Difficulties have arisen from persons, perhaps not subjects of the State from which the embassy is sent, claiming, without sufficient warranty, to belong to it. It has therefore been enacted by the municipal laws of some countries, and it ought to be the usage of all, to require a list of the persons composing the suite to be delivered to the Minister for Foreign Affairs, or other proper officer (b).

CLXXXIX. In England especial provision has been made concerning the arrest of foreign ambassadors, or other foreign public ministers, and their domestics, or domestic servants, by the Statute 7th Anne, c. 12, which makes any process against them, or their goods and chattels, altogether void; and provides, that the persons prosecuting, soliciting, or executing such process, shall be deemed violators of the Law of Nations, and disturbers of the public repose, and shall suffer such penalties and corporal punishment as the Lord Chancellor and the two Chief Justices, or any two of them, shall think fit. But no trader within the description of the Bankrupt Laws, who shall be in the service of any


(a) Traité complet, § 6, ii. p. 21. When attached to Papal legations they are styled auditeurs de nonciature.

Wheaton, ib.

Vattel, ib.

(b) Wheaton, ib.

Bynck, ib.: "Quum autem ea res nonnunquam turbas dederit, optimo exemplo in quibusdam aulis olim receptum fuit, ut legatus teneretur exhibere nomenclaturam comitum suorum, sed pessimo exemplo id nunc ubique gentium negligitur."
ambassador, or public minister, is to be privileged or protected by this Act; nor is anyone to be punished for arresting an ambassador’s servant, unless the name of such servant be registered in the office of one of the principal Secretaries of State, and by him transmitted to the Sheriffs of London and Middlesex, or their undersheriffs or deputies (c).

This Act itself was, as Lord Chief Justice Abbott remarked, “only declaratory and in confirmation of the Common Law. It must, therefore, be construed according to the Common Law, of which the Law of Nations must be deemed a part” (d).

CXC. There have been various decisions on the subject of this statute. It has been held to be insufficient to claim the discharge of a defendant—as being servant to the Minister of the Prince Bishop of Liège; and that it was necessary to learn in what manner the Minister was accredited (e). “Certainly,” said Lord Mansfield, in this case, “he was not ambassador, which is the first rank. Envoy, indeed, “is a second class; but he is not shown to be even an “envoy; he was called minister, it is true, but minister “alone is an equivocal term.” And Lord Mansfield also said that the Law of Nations does not take in Consuls (f) or agents of commerce, although received as such by the Courts at which they are employed; and this case was expressly determined in an elaborate judgment in the case of Viveash v. Becker (g).

The servant need not lie in the house, although he must do some service there (h). He must be a real, not a nominal

(c) Russell on Crimes, (ed. Greaves, 1848), vol. i. p. 754.
(f) Vide post, Chapter on Consuls, in which these decisions are further mentioned.
(g) 3 Maule & Selwyn, 234.
servant (i). Many cases arose upon claims of privilege by persons as servants of the Count Haslang, the Bavarian Ambassador, of whom it was said that, although a minister of a very humble rank, he had more domestics registered than the ambassadors of the most potent powers in Europe.

In the case of Masters v. Manby (k), application was made to the Court for the discharge of the defendant, as being the ambassador's messenger, and it was sworn that he sometimes executed service as such. The defendant was a land waiter at the Custom House, and the Court were of opinion that he could never be deemed a bona-fide domestic. In Triquet v. Bath (l), the privilege was allowed to the defendant, as English secretary of the ambassador, the defendant's affidavits being so framed that everything was sworn that in absolute strictness could be required, to bring him within the description of a domestic servant; and the Court held that it was sufficient if an actual bona-fide service were proved; and that if such a service were proved, they must not, upon bare suspicion, suppose it to have been merely colourable and collusive.

In Lockwood v. Coysgarne (m), the claim of privilege was disallowed to the defendant as the ambassador's physician, as not being a case of bona-fide service; and the Court said, it would be of very bad consequence if protections should be set up for sale, or made use of merely for the sake of screening people from their just debts. In Darling v. Atkins (n) the privilege was disallowed to the ambassador's English secretary, he being purser of a man-of-war, which was held to be an office incompatible with the situation of secretary to the ambassador. In this case it was observed, that the ambassador's secretary is privileged, the statute being only explanatory of the Law of Nations, and the words

(i) Crosse v. Tallot, 8 Modern Reports, Case 200 (tempore Geo. L.).
(k) 1 Burrows, 401.
(l) 3 Burrows, 1478.
(m) 3 Burrows, 1676.
(n) 3 Wilson's Reports, 33.
"domestic" and "domestic servant" are only by way of example (o). "The statute only requires the names of the "persons privileged to be registered, for the purpose of "proceeding against the parties criminally, for a violation "of the Act, and not for the purpose of exemption from "arrest" (p).

In a later case it was decided, that though a foreign minister does not lose his privilege of exemption of suit by trading in this country, his domestic servants do, under the limitation contained in the statute on which we have been commenting (q).

CXCI. In 1772, the Baron de Wrech, Minister Plenipotentiary of the Landgrave of Hesse-Cassel at the Court of Paris, was recalled from his embassy. He was about to quit Paris without paying the debts which he had contracted there. His creditors, especially a Marquis de Bezons, besought the Minister for Foreign Affairs not to grant the Baron his passport. It was accordingly refused. All the corps diplomatique at Paris remonstrated against this act as a violation of International Law.

The French Minister, le Duc d'Aiguillon, replied in an elaborate memoir, drawn up by M. Pfeffel, upon the Rights of Ambassadors; defended, upon the authority of Grotius and Bynkershoek, the right of using that species of constraint against an ambassador which did not interfere with the exercise of his functions. He further appealed to the practice of other States, as warranting the step which had been taken, and especially to that of Hesse-Cassel itself, which had imprisoned a Dutch ambassador, in order to compel him to render an account of a charitable institution, of which he had been the administrator. It was admitted that this attack on the person of an ambassador was indefensible, but it was added that Holland had not denied the jurisdiction of Hesse-Cassel in the matter.

(o) Hopkins v. De Robeck, 3 Durnford and East's Reports.
(p) Ibid.
The Landgrave was compelled to make an arrangement with the creditors of the Baron de Wrech, before that minister could obtain his passport (r).

If this had been a proceeding between the States of Hesse-Cassel and Holland, on the principle of reciprocity of practice, it might have been justified, but, under the circumstances, it was a direct infringement upon the general principles of International Law.

CXCI. The Courts of Justice in England have adhered to the proper rule of law upon this subject. Any apparent exceptions will be found to range themselves under that class of cases in which the ambassador has either been a plaintiff in a suit, or engaged as a merchant or trader in the commerce of the country to which he has been delegated.

In the year 1694, a case in the High Court of Chancery, intituled Pilkington v. Stanhope (s), was decided as follows: "The plaintiff having brought a bill, to redeem an old "mortgage, against the defendant, who was then an Ambas-"sador at the Court of Spain, the defendant obtained an "order that all proceedings should cease until his return "from his embassy. The plaintiff moved to discharge the "order; and upon debate it was agreed a protection lies "for an ambassador, quia profecturus, or quia moraturus, "and may at law cast an essoin for a year and a day, and "may afterwards renew it, if the occasion continues."

The Court ordered a stay of proceedings for a year and a day from this time, unless the defendant should sooner return into England.

CXCIII. In 1854, an action (t) was brought in the Court of Common Pleas against the Secretary of Legation of the King of the Belgians, a Monsieur Drouet, as well as other Directors of a Society formed in Belgium and London for working the Royal Nassau Sulphate of Barytes Mines.

(r) Causes célèbres du Droit des Gens, par De Martens, t. ii. p. 110.
(s) Vernon's Cases, vol. ii. p. 317.
The action was to recover deposits paid by the plaintiff on shares in the above-mentioned society. Before the writ issued, in June 1853, M. Drouet, who was Secretary of Legation of the King of the Belgians, instructed his attorney to write to the attorney for the plaintiff, to ask if a writ was to be issued, and if it was, to direct that it should be sent to him; and after the writ was issued, M. Drouet directed his attorney to enter an appearance, which he did accordingly. M. Drouet was abroad from June till the beginning of December, on the duties of his office, and in the meantime the action proceeded. M. Drouet pleaded the general issue by his attorney. Notice of trial was given for the 20th of December, and a special jury was obtained on the application of M. Drouet. On M. Drouet's return to England, in December, his attorney took out a summons to stay all proceedings, or to strike out his name from the proceedings in the action, on the ground of his privilege as a public minister. The summons was heard before Talfourd J., who ordered proceedings to be stayed till the fifth day of next term.

Lord Chief Justice Jervis said: "There is no doubt that the defendant, M. Drouet, fills the office of a public minister, such as the privilege contended for will attach to; and I think it equally clear that, if the privilege do attach, as it undoubtedly does attach to the character of minister, it is not, in the case of a minister, interfered with or abandoned by the circumstance of trading, as it would be if the claim were set up in respect of the privileges of a servant of the ambassador, under the statute of Anne (u). If an ambassador or minister violate the character in which he is delegated to this country, by entering into commercial transactions, that raises a question between the country to which he is sent and the country from which he is sent; but he does not thereby lose any privilege to which he may be entitled, the privi-

(u) Vide post.
lege being a general privilege, and the limitation attached
to the privilege, by reason of trading, being confined by
the statute of Anne to the case of servants of the ambas-
sador, who may lose the privilege.

Admitting, therefore, that the applicant in this case is a
person entitled to the general privilege, which he has not
lost by any trading transactions into which he may have
entered; if such be established to the satisfaction of the
Court, the question is, whether he is entitled, under all
the circumstances of the case, to the privilege which he
now claims. Now, although it is admitted that no pro-
cess against person or goods can be available against the
person or goods of an ambassador or minister, no case has
been cited to show that an application like this, to stay
all the proceedings in an action against such a person, is
available in the Courts of this country. On the contrary,
it appears, on examination, that in the case of servants,
and the same principle must apply with reference to
ministers, the practice has been not to stay all proceedings,
but to relieve the person of the servant from the vexation
of service of process, or of bail, and the applications have
hitherto been, as far as I can understand them, where the
party has been arrested, to discharge him from the arrest
on entering a common appearance.

It is contended, and perhaps it is undoubted, that an am-
bassador or minister has a privilege from suit, or, at all
events, from such suits as ultimately result in the taking
of his person, or of his goods necessary for his state or
comfort; and that he cannot be compelled, in invitum or
involuntarily, to enter into litigation in a country in which
he is resident; but it is admitted by all the foreign jurists,
that where suits can be founded without attacking the
personal liberty or comfort, or interfering with the per-
sonal privileges of the individual, they may proceed.”

Mr. Justice Maule said: “I think, on the ground that
M. Drouet has appeared in this action, and allowed it to
go through certain stages, this application ought to fail.
"It is a grave question whether an ambassador, or public minister, which M. Drouet undoubtedly is, is so far protected as not to be liable in any manner, supposing him to object to the jurisdiction. That question is not decided by any legal determination in this country, nor as far as judicial determinations go, do we find it so determined elsewhere. With respect to mere cases in which a special application was made under the 5th section of the statute of Anne, they were cases in which servants of ambassadors, who had been sued and arrested, were discharged on common bail. Now, there is a great distinction between an ambassador and the domestic servant of an ambassador. The ambassador has a privilege, and the privilege of his domestic servant is not the privilege of the servant himself, but of the ambassador, and is based on the ground that the arrest of the domestic servant might interfere with the comfort or state of the ambassador. Where these are not interfered with at all, the ambassador is not interfered with by the suit; and the servant has no privilege except that which arises from the privilege of the ambassador. It is an important point, and one fit to be very gravely considered when it fairly arises, whether an ambassador is liable to be sued by process not affecting his person or his goods; whether by such a process he can be brought, unwillingly, into the Courts of this country, and have his rights determined on, perhaps even so as to interfere with his comfort. A man could not stand by and without care allow a suit to be determined on which the decision would be binding upon him; and, therefore, it may well be questioned whether the privilege of the ambassador is not as extensive as the text of "Blackstone (x) alleges it to be."

CXCIV. In some countries the immunity of the ambassador has not been left to rest upon the general recognition of International Law by the Municipal Law, but has been made the subject of express enactment.

(x) Vide post.
In England, Blackstone observes (y) that so few cases (if any) had arisen, wherein the privilege was either claimed or disputed, even with regard to civil suits, that our law-books are (in general) quite silent upon it previous to the reign of Queen Anne, when an ambassador from Peter the Great, Czar of Muscovy, was actually arrested and taken out of his coach, in London (z), for a debt of 50l., which he had there contracted. Instead of applying to be discharged upon his privilege, he gave bail to the action, and the next day complained to the Queen. The persons who were concerned in the arrest were examined before the Privy Council, of which the Lord Chief Justice Holt was at the same time sworn a member (a), and seventeen were committed to prison (b), most of whom were prosecuted by information in the Court of Queen's Bench, at the suit of the Attorney-General (c), and at their trial before the Lord Chief Justice were convicted of the facts by the jury (d); reserving the question of law, how far those facts were criminal, to be afterwards argued before the judges; which question was never determined. In the meantime, the Czar resented this affront very highly, and demanded that the Sheriff of Middlesex, and all others concerned in the arrest, should be punished with instant death (e). But the Queen directed her Secretary to inform him, "that she could inflict no punishment upon any the meanest of her subjects, "unless warranted by the law of the land; and therefore "was persuaded that he would not insist upon im-
"possibilities" (f). To satisfy, however, the clamours of the foreign ministers (who made it a common cause), as well as to appease the wrath of Peter, a bill was brought into

(z) July 21, 1708; Boyer's Annals of Queen Anne.
(a) July 25, 1708; ibid.
(b) July 25 and 29, 1708; ibid.
(c) October 23, 1708; ibid.
(d) February 14, 1708; ibid.
(e) September 17, 1708; ibid.
(f) January 11, 1708; ibid.: Mod. Un. Hist. xxxv. 454.
Parliament \((g)\), and afterwards passed into a law \((h)\), to prevent and punish such outrageous insolence for the future. And with a copy of this Act elegantly engrossed and illuminated, accompanied by a letter from the Queen, an Ambassador Extraordinary \((i)\) was commissioned to appear at Moscow \((k)\), who declared, "that though her Majesty could not inflict such a punishment as was required, because of " the defect in that particular of the former established " constitutions of her kingdom, yet, with the unanimous " consent of the Parliament, she had caused a new Act to " be passed, to serve as a law for the future." This humiliating step was accepted as a full satisfaction by the Czar; and the offenders, at his request, were discharged from all further prosecution \((l)\).

CXCV. The North American United States passed a statute \((April 30, 1790)\), containing provisions similar to those of the statute of Anne, which has just been mentioned, and the decisions of the tribunals of the United States have been pretty much in accordance with those of the courts of justice in England \((m)\).

CXCVI. In France \((n)\) before 1789, the ambassadorial privileges were not sanctioned by any law, but rested on the recognition of usage. In that year the Constituent Assembly, in answer to an address presented to them by the corps diplomatique, declared the inviolability of these immunities. In 1794 \((3rd March)\) the National Convention decreed that all questions relating to these immunities should be referred to the Committee of Public Safety. At the present time all complaints upon this subject are

\(\text{(g) Com. Journ. December 23, 1708.}\)
\(\text{(h) April 21, 1709; Boyer, ibid.}\)
\(\text{(i) Mr. Whitworth.}\)
\(\text{(k) January 8, 1709; Boyer, ibid.}\)
\(\text{(l) Vide ante, decisions on cases arising under this statute.}\)
\(\text{(m) See United States v. Hand, 2 Washington's (America) C. C. Rep. 435.}\)
\(\text{Dupont v. Pichon, 4 Dallas (American) Rep. 321.}\)
\(\text{(n) Rulik, i. ii. t. ii. c. ii. s. 219.}\)
addressed to the Minister for Foreign Affairs. In the projet of the Code Civil, there followed upon the third article an exceptional provision in these words:—"Les étrangers revêtus d'un caractère représentatif de leur nation, en qualité d'ambassadeurs, de ministres, d'envoyés, ou sous quelque autre dénomination que ce soit, ne seront point traduits, ni en matière civile, ni en matière criminelle, devant les tribunaux de France. Il en sera de même des étrangers qui composent leur famille ou qui seront de leur suite." But this article was rejected by the Conseil d'État, upon a suggestion of the elder Portalis that "ce qui regarde les ambassadeurs appartient au droit des gens; nous n'avons point à nous en occuper dans une loi qui n'est que de régime intérieur" (o). Therefore the 14th article of the Code only provides for obligations contracted between a French subject and an individual foreigner; nevertheless the provision in the projet is considered by the legal authorities in France as, by usage at least, a part of the law of the land.

CXCVII. Spain possesses various laws upon this subject; one relative to the immunity of ambassadors from taxes, another relative to their debts, by which it should seem that proceedings may be taken before the Spanish tribunals against ambassadors for debts contracted during the time of their mission, but not on account of antecedent obligations, a municipal regulation which is inconsistent with the principles of International Law upon this subject.

Another law suppresses the right of asylum in the hotel, and another provides that only natives may represent the kingdom of Spain at Foreign Courts (p)

CXCVIII. Portugal has a law of John IV. (q), renewed


(p) Félix, i. ii. t. ii. c. ii. s. 220.

Recopilacion de Leyes, l. ix. t. 31, l. 4.


(q) A.D. 1640–1650.
under John V., to the same effect as that of Spain, with respect to the debts and contracts of the ambassador.

CXCIX. Russia has enacted that all disputes against any member of the Embassy must be transmitted to the Minister for Foreign Affairs, and that no judgment can be put in force without the precincts of the hotel, except through the intervention of that minister; all persons attached to the Embassy and all foreign couriers are exempt from the obligation of being furnished with a Russian passport, and from being inspected by the custom-house officers.

All members of the corps diplomatique are allowed to introduce their moveables free from duty, and to receive those which may be addressed to them during the first year of their residence in Russia upon the same terms (r).

CC. With respect to the German Powers, Austria has enacted that all persons belonging to the Embassy shall enjoy the privileges conferred upon them by the principles of International Law and Public Treaties (s).

The Bavarian Code provides that all persons enjoying ambassadorial rights are exempt from the ordinary jurisdiction of the tribunals of the country (t).

The Prussian Code enacts that all persons belonging to the embassy shall be entitled to those immunities which International Law and existing Treaties have conferred upon them; that Prussian subjects, who with the permission of their Sovereign, have been accredited as ministers from Foreign Courts to the Court of Prussia, shall be

(r) La Revue étrangère, t. i. ii. pp. 871, 555, 648.

Forix, ibid.

(s) De Puttlingen, Die gesetzliche Behandlung der Ausländer in Oesterreich, u. s. w., ss. 52, 55, 116, 119.

"Die Gesandten, die öffentlichen Geschäftsträger und die in ihren Diensten stehenden Personen, geniessen die in den öffentlichen Verträgen gegründeten Befreiungen."—Allgemeines bürgerliches Gesetzbuч fur die gesammnten Deutschen Erbländer der Oesterreichischen Monarchie, s. 39.

(t) C. i. s. 11.
subject, so far as their private affairs are concerned, to the laws of Prussia; that ambassadors accredited by Prussia to foreign courts, are justiciable by the laws of the place of the domicil which they last had, previously to entering upon the discharge of their diplomatic duties. It is further provided that no reigning German Prince or Ambassador shall be subject to arrest by any Prussian tribunal, unless there has been, a special reservation upon the subject made with respect to them previously to their reception at Court (u).

CCI. The ancient States-General of the Netherlands made an edict to the effect that no persons attached to an Embassy, on their arrival or on their departure, or on their passage through the country, should be liable to be arrested, or to be proceeded against on account of any debts contracted therein.

A similar law prevails in Denmark (x).

CCII. Among the privileges which the usage of nations has imparted to the ambassador, and which are not derived from the reason of the thing, is the exemption of his person and his personalty from taxation. He is, moreover, generally exempt from the payment of duties upon articles imported for the use of himself or of his family (y).

CCIII. Different nations, however, adopt different regulations, both as to the amount of this free importation, and as to the time when it is permitted. Many nations limit it to a fixed sum during the continuance of the embassy.

It has been holden, however, in England that the estate of an ambassador or attaché to a legation, domiciled in this country, is not exempt from legacy duty. Such a func-

(u) Allgemeines Landrecht für die Preussischen Staaten: Einleitung, ss. 36, 37, 38, 39.
Felix, ibid.
(x) Felix, ibid.
(y) Wheaton, l. 279.
Heffers, s. 217.
Merlin, ibid. s. v. 3.
tionary does not by his appointment to an embassy to this country lose a domicil previously acquired here.

A testator, whose domicil of origin was Portugal, came in 1818 to England, as agent to a wine company, and was so employed until 1833, and from that time to his death in 1859 resided in England. In 1857 he was appointed, and continued to his death, an attaché to the legation of the King of Portugal, in England, and in 1858, in respect of that appointment, he claimed and obtained exemption from assessed taxes. In a testamentary paper he stated that, as he was a foreigner, who always intended to return to his country, and was besides an attaché to the legation of the King of Portugal, his property was not subject to legacy duty:—Held, that the testator acquired a domicil in this country, and did not lose it by the appointment of attaché, and that his estate was liable to legacy duty (z).

The Roman Law (a) compelled the legate to pay duty on articles which he brought with him, but allowed him an exemption upon articles procured "ex Romano solo" for the purpose of transmission to his own country.

This immunity is never extended to—
1. Real property;
2. To personalty unconnected with the ambassadorial character.
3. And very seldom, if ever, to tolls and postages; and generally speaking, it is clear that this class of privileges cannot be considered (b) as resting on an unalterable basis.

(b) "Im Allgemeinen kann daher von einem feststellenden völkerrechtlichen Privilegium hinsichtlich dieses Punctes keine Rede seyn."—Heffters, ibid.
CCIV. The house, or as it is usually called, the hotel, of the ambassador is by universal consent inviolable, and inaccessible to the ordinary officers of justice or revenue (c).

The same remark applies to his carriage. Upon this valuable and necessary immunity was at one time grafted the monstrous and unnecessary abuse of what was called the Right of Asylum. In other words, the hotel was to be a place of refuge for offenders against the law of the State in which it was situated. Bynkershoek (d) is clearly right in pronouncing that, whether common sense, the reason of the thing, or the end and object of embassies be considered, there is not even that faint colour of reason which the most absurd pretensions can generally put forth, to be alleged in favour of such a custom. History teems with examples of the evil consequences resulting from this absurd privilege, which was often extended from houses to whole districts and quarters of the town, as at Rome and Madrid (e).

It is true that those States which have allowed this abuse

(c) Wicquefort, l. s. 28: "La maison et les domestiques de l'ambassadeur sont inviolables."—P. 414.

Bynk. ibid. c. xxi.: "Ædes legati an próebent asylum."

Vattel, l. iv. c. ix. s. 117: "L'indépendance de l'ambassadeur serait fort imparfaite, et sa sûreté mal établie, si la maison où il loge ne jouissait d'une entière franchise, et si elle n'était pas inaccessible aux ministres ordinaires de la justice. . . . La maison d'un ambassadeur doit être à couvert de toute insulte sous la protection particulière des lois et du droit des gens: l'insulter, c'est se rendre coupable envers l'état et envers toutes les nations."

Merlin, ibid. v. 3.

(d) "Omnia legatorum privilegia, quibus utuntur ex tacito gentium consensu, non alio fine comparata sunt, quam ut tuto, sine remora, sine impedimento cujusquam, officio suo fungantur. Possunt autem tuto fungi, etiamsi facinorosos non recipient, nec occultant, nec Principi, apud quem sunt, intervertant jurisdictionem, non in sui vel suorum, at tertii, ad se non pertinentis, gratiam. Sed ejusmodi haec sunt, ut vix seriam disputacionem desiderent."—Bynk. ibid.

(e) "The Polish Ambassador at Rome in 1680, the Spanish in 1682, the English in 1686, voluntarily renounced these exorbitant and mischievous privileges."—Miruss, s. 361.
are bound to give notice of their intention to abolish it previously to the reception of the ambassador (f). But it is also true that there can be no prescriptive right in any nation to demand a continuance of this obstacle to good order, justice, and peace, wholly unconnected as it is with the maintenance of the security or dignity of embassies. And every Government must agree with the wish of the learned Merlin (g), that such a nuisance should be universally abolished.

No one can declare more strongly than Grotius that the jus asyli is no part juris gentium. "Ipse autem legatus an "jurisdictionem habeat in familiam suam, et an jus asyli in "domo sua pro quibusvis ex confugientibus ex concessione "pendet ejus apud quem agit. Istud enim juris gentium non "est" (h).

In 1726, the Duke of Ripperda, the First Minister of Philip V., took refuge in the hotel of Lord Stanhope, the English Ambassador at Madrid. The King asked for the opinion of the Council of Castille, the first tribunal in the kingdom, whether, without a violation of International Law, he had a right to take his subject Ripperda, accused of high-treason, by force, if other means were of no avail, from the hotel of the English Ambassador; —the answer was in the affirmative, and Ripperda was accordingly taken by force from the hotel, and his papers were seized at the same time.

(f) Wicquefort, citing the instance of certain conspirators seized by the Venetian Government in the house of the French Ambassador, and the answer with respect to it made by the Venetian Ambassador, that he would deliver up to justice any French rebels that took refuge in his hotel, adds: "On peut dire sur cet exemple, que, suivant le droit des gens, la maison de l'ambassadeur ne peut donner sûreté qu'à lui et à ses domestiques, et ne peut servir d'asyle aux étrangers que du consentement du souverain du lieu, qui peut estendre ou restreindre ce privilège comme il veut: parce qu'il ne fait pas partie du droit des gens."—S. 28, p. 414.

(g) "On voit par ces détails, que le droit d'asyle est, à l'égard des hôtels des ambassadeurs, une source perpétuelle de dissensions et de querelles. Le bien des nations demanderait, sans doute, qu'on l'abolît tout-à-fait; et cela parait d'autant plus raisonnable, qu'il y a plusieurs états dans lesquels il n'est point connu."—Merlin, ibid.

(h) L. ii. c. 18, viii. 2.
The British Government, of which the Duke of Newcastle was then prime minister, complained bitterly of this act, and demanded reparation for an alleged insult to the ambassador; the complaint, however, was founded rather upon the manner in which the act was done than upon a claim for the right, on the part of the ambassador, to have retained the refugee. Spain refused to make any reparation, and asserted boldly the legality of what she had done. The difference between the two nations increased in bitterness till, in the next year, war upon other grounds broke out between them. It would seem to follow, from the principles which have been laid down, that Spain was not guilty of any violation of International Law (i).

CCV. In 1747, a Swedish merchant of the name of Springer, accused of high-treason, took refuge in the hotel of the English Ambassador, Colonel Guideckens, at Stockholm. The ambassador refused to surrender him; the Swedish Government surrounded his house with troops, searched everybody who entered it, and caused the carriage of the ambassador, when he left the hotel, to be followed by a guard. Guideckens surrendered Springer under a protest as to the violence done to his ambassadorial privilege. England demanded reparation, and Sweden steadily refused to give it, and the ambassadors from the two Courts were mutually withdrawn.

It seems clear that the conduct of Sweden was in accordance with the principles of International Law (k).

CCVI. It sometimes happens that a State authorises a foreign State to acquire, within its territory, by purchase, a residence for its ambassador, and allows such residence to be vested in the Government of the country which accredits the ambassador (l).

---

(i) De Martens, C. C. i. 174.

(k) Ibid. i. 326.

(l) Act of the British Parliament "to authorise the purchase by the Prussian Minister of a residence in England for the use of the Prussian Legation, and to regulate the future holding of the same."—13 & 14 Vict. c. 3.—Hertslet's Treaties, vol. viii. p. 866.
CCVII. So long, however, as the ambassador does not convert his hotel into a place of refuge for offenders against the laws of the State, he has a right to enjoy the most perfect and uncontrolled liberty of action within (m) the precincts of his hotel.

It seems a corollary from this proposition that he should be entitled to exercise privately the rites of his own religion, though it be at variance with that of the law of the State in which he is resident (n).

CCVIII. Strictly speaking, however, this privilege is confined to himself, his suite, and his fellow-countrymen commorant in the foreign land; for although he cannot be prevented from receiving native subjects who come to his hotel, yet it is competent to the State (o) to prohibit them from going to the ambassador's hotel for this, or indeed for any purpose. According to Wicquefort, the State might require that the religious services be performed in the native language of the ambassador. This, however, does not appear to be a tenable position. The sanctity of the hotel must be violated, in order to ascertain the language, and certainly there never could have been any semblance of reason for preventing the ambassador or his chaplain from the use of the universal, or Latin, language in their devotions. This restraint by the State must be placed, if at all, upon her own subjects.

CCIX. Since the period of the Reformation, general International usage has sanctioned the right to exercise private domestic religious rites in the hotel, which, so long as they are strictly private, seem to claim the sanction of natural as well as conventional International Law. Two conditions, however, have formerly accompanied the permission to exercise this right—one, that it should be permitted to only one minister at a time from one and the same court; another,

(m) Wicquefort, ibid, ss. 415, 418.
(n) Martens, ss. 224, 5, 6, generally on this subject.
(o) Martens, s. 225. Permission even for foreigners belonging to a third country to attend has been the subject of treaties.
that there should not be already a public or private exercise of the religion existing and sanctioned without the precincts of the hotel.

Having regard to this latter condition, the Emperor Joseph II., having granted to the Protestants at Vienna the liberty of meeting for the private exercise of their devotion, insisted on the chapels of the Protestant ambassadors being closed.

There does not, however, seem to be any foundation in principle for this very arbitrary act; more especially as Protestant is a mere term of negation, under which are included worshippers of very different tenets.

CCX. The only sound principle of law on this subject is that already mentioned, viz.:- Religious rites privately exercised within the ambassadorial precincts, and for his suite and countrymen, ought not to be interfered with.

The erection of a chapel or church, the use of bells, and of any national symbol, is a matter entirely of permission and comity.
CHAPTER IX.

AMBASSADORS.—DIFFERENT CLASSES OF PUBLIC MINISTERS.

CCXI. The Romans, and indeed the ancients generally, recognised but one class of diplomatic agents, whom they usually designated by the terms *oratores* or *legati*.

In Europe these terms found their translation at first in the generic term of Ambassadors (*a*), or in some equivalent designation of a single class. Since the fifteenth or sixteenth century, the refinements and the vanity (*b*) of European Courts have introduced various grades of diplomatic agency into the positive Law of Nations, which are only so far of importance inasmuch as different ceremonial privileges are attached to the different degrees of legation.

But to the accredited public minister of every State, whatever be his designation, the rights of inviolability and the privileges of extraterritoriality appertain with equal certainty and strength (*c*).

---

*(a) Ambassadeurs, Embaxadores, Ambaciatori;* perhaps from the Spanish *embiar,* to send, or more probably, regard being had to the similarity of the word in various languages, from *ambactus* (*Botschafter,* *Gesandter*).

*(b) And the economy, it should seem, less expense and state being necessary for the minister of inferior rank. According to Vattel, Louis XI. set the example.—L. iv. c. vi. s. 69.*

There have been two classes, Klüber says, since the beginning of the sixteenth, and three since the beginning of the eighteenth century.—S. 179.

*(c) "Legati varia nunc nomina rem ipsam idem sunt."—Bynth. De Foro Leg. c. 1.*

"Quæcunque antem legatorum nomina sint et quæcunque legatio sive
CCXII. Equally unknown to the ancients was the modern distinction of Ordinary, or Resident (d), and Extraordinary Ambassadors.

The Romans, safe, as they reasonably concluded, in the vastness of their empire, from foreign invasion, and having but little commerce with other nations, neither required nor instituted any resident embassy in foreign countries.

CCXIII. The breaking up of this vast empire into various kingdoms introduced that necessity, which, under the gigantic domination of Rome, had not existed.

It was not, however, till after the Peace of Westphalia (1648) that the institution of permanent embassies, though beginning, contemporaneously with standing armies, to take root soon after the fifteenth century, can be said to have become the established practice of nations (e). It was about this period that the rights of legation began to be ascertained with the careful minuteness which distinguishes this part of positive International Law.

CCXIV. Before the close of the fifteenth century, a second order, and during the eighteenth century a third order, of diplomatic agents appears to have sprung up (f); and since the Congress of Vienna, in 1815, and the protocol of Aix-la-Chapelle (g), in 1818, to which Austria, France, Great

ordinaria, sive extraordinaria, quamvis et pro mittentiis et pro missi dignitate et titulo alius atque alius legatis habeatur honor, id tamen constare debet, si, ut oportet, ex jure gentium causam aestimemus, legati personam semper atque sancte habendam, semper aequo custodienda jura, quae legatis, tanquam legatis, debentur."—Bynk. Ibid.

All classes of diplomatic agents have equally the "jus revocandi domum."—Ibid.

(d) Vattel, l. iv. c. vi. s. 73.
Heffers, s. 199.
Miris, s. 89.
Klüber, s. 170.
Miri, Répert. Ministre public.
(f) Heffers, s. 357, n.
(g) Miris, s. 85.
Britain, Prussia, and Russia were parties, the diplomatic hierarchy has consisted, technically speaking, of four orders, classified as follows:—

The first class is composed of *ambassadors*, ordinary and extraordinary (*h*), as their mission be limited or indeterminate in point of time, *Papal legates, a or de latere*, and *nuncios*, ordinary or extraordinary.

CCXV. All these diplomatic agents enjoy, in the fullest manner, the privileges incident to what is universally called the *representative* character, by virtue of which they represent their Sovereign or State, not only in the conduct of affairs at a foreign court, but they also represent (*i*) the person of the Sovereign or State, and are by usage entitled, speaking generally, to the honours which the Sovereign or the State (if it could be conceived to be present) would receive.

This idea of the full representative character in the agent, had no doubt its origin in the fundamental constitution of Monarchical States, because it was possible to represent the *person* of the Monarch; but Republican States, nevertheless, have imitated the example.

CCXVI. *Legates a latere* must not be confounded with another class of Papal agents designated *Nuncios* (*h*).

The legates *a latere* are sent by the Pope into Roman Catholic countries, to exercise, in his name, the spiritual

---

(*h*) *E.g.* such as are sent on embassies of congratulation, condolence, or excuse (*Mirus*, s. 80), or to adjust some particular dispute, although there be a resident ambassador.

*Martens*, s. 193.

(*i*) *Merlin* (*Rép., Ministre public*, s. 1.), however, says, "Nous disons que, dans un tel ministre, la représentation est presque parfaite, car elle ne l'est pas absolument: quels que soient les honneurs qu'on rend à un ambassadeur, ils n'égalent jamais et nulle part ceux qu'on rendrait à un souverain en personne; et c'est l'embarras de l'étiquette, à l'égard d'un souverain se trouvant en pays étranger, qui a fait imaginer l'incognito."

(*k*) The *Legate* is selected from the cardinals, but not the *Nuncio*. *Vide post.*

*Merlin*, *ibid.*

**VOL. II.**
functions which depend upon his recognition as Head of the Church.

The nuncios are ambassadors sent to foreign courts to represent the Pope in the conduct of his affairs, of whatever kind they may be (l).

CCXVII. The division of ambassadors and nuncios into ordinary and extraordinary had its origin in the distinction between permanent or indeterminate missions, and those which had for their object the transaction of an extraordinary, particular, and determinate business.

In modern practice, however, the title “extraordinary” is given occasionally, as a title of greater honour, even to ambassadors destined to a residence, for an indeterminate period, at the court to which they are sent (m).

CCXVIII. Diplomatic agents of this first class can only be sent by States, whether monarchical or republican, entitled to royal honours. That is to say, if an inferior State accredit an ambassador of the first class, he will not be received (n) by the great European powers. It is impossible, however, to maintain, as has been attempted, that the right to send ambassadors is confined to monarchies, or to deny that the rank of the ambassador, abstractedly speaking, depends upon the sending and not upon the receiving State (o).

CCXIX. The second class comprises Envoys (Envoyés, Ablegati, Prolegati, Inviati) Ordinary and Extraordinary.

Ministers Plenipotentiary (Plena potentia muniti, Ministres plénipotentiaires, bevollmächtige Gesandten, Minister).

(l) Vide post, Chapter on Religion and the State.
(m) Martens, ubi supr.
(n) If he be received at all, it must be according to his credentials.—Vattel, l. iv. c. vi. s. 76. Vide post.
(o) Miruss, s. 113.
Heffters, s. 209.
Martens, s. 198.
Vattel, l. iv. c. vi. s. 78.
The Austrian Minister at Constantinople, who appears to be by custom exclusively designated as *Internuncio*.

The *Internuncio* of the Pope.

CCXX. The third, or intermediate class, created by the Conference of the Five Powers at Aix-la-Chapelle, in 1818, is composed of what are called "Ministres résidents," accredited to the Sovereign. Ministers of this class are sometimes said to represent the affairs, and not the person, of their Sovereign, and to be therefore of inferior dignity (p).

The fourth, usually denominated the third class, includes *Chargés d'Affaires* (*Geschäftsträger*) accredited to the Minister of Foreign Affairs; either such as are originally sent and accredited *ad hoc*, or who have been nominated, either verbally or by writing, *ad interim*, during the absence of the minister (q), or accredited to courts to which it is not customary to send a formally constituted minister.

The ceremonial honours to which this class may be entitled appear doubtful, but they are entitled to the immunities of recognised diplomatic agents, though without the formal character of "Ministers." To this class belong *Consuls* (r) being accredited as diplomatic agents, or public ministers, such as are maintained by the Christian Powers of Europe and America at the Courts of the Barbary States or in Egypt.

CCXXI. These different orders of ministers, it must be observed, can only be distinguished by the ceremonial honours accorded to them; and, in fact, these divisions,

---

(p) "Le résident ne représente pas la personne du prince dans sa dignité, mais seulement dans ses affaires."—*Vattel*, l. iv. c. vi. s. 73.

See below, remarks on his real identity with the envoy.

(q) Ordinarily the Secretary of Legation.—*Merlin*, ibid. s. l. vi.

Martens, s. 194.

Klüber, s. 182.

Martens, s. 194.

(r) "Si ce prince envoie un agent avec des lettres de créance, et pour affaires publiques, l'agent est dès-lors ministre public: le titre n'y fait rien."—*Vattel*, l. iv. c. vi. s. 75.
which make the difference of order depend upon the difference of ceremonial, are, strictly speaking, illogical.

For if, upon this principle of distinction, it were asked why the ambassador enjoyed greater honours than the envoy, it must be answered, because the former belongs to the first, and the latter to the second class; and if it were asked why the former belonged to the first, and the latter to the second class, it must be answered, because the former is an ambassador and the latter an envoy.

CCXXII. The only sound and logical division is that which is founded on the true principle of general International Law, viz., a regard to the character of the affair evidenced by his credentials (mandatum, mandat), entrusted to the management of the agent, whatever be his title. There is a clear distinction, according to the nature of things, between agents (Plenipotentiaries), accredited by one Sovereign to another Sovereign, and agents (Chargés d’Affaires), accredited by one Minister for Foreign Affairs to another Minister for Foreign Affairs (t).

There is also a distinction, less clear but conceivable, between the minister representing his Sovereign, both in his person and in his affairs, as is the case with the ambassador, and the minister representing the Sovereign in his affairs only, as, according to Vattel (u), is the case with the Resident, or even with the Envoy. Neither of these classes of ministers have the preeminently representative character (caractère représentatif par excellence) which belongs to the full ambassador (x). It is between these two classes, therefore, that Vattel pronounces "the most necessary and the only true distinction" to exist.

The juster division, however, appears to be that already

(s) There is much truth in M. Pinheiro Ferreira’s remarks on this point.—Note to 192nd section of Martens.
(t) Martens, s. 191.
Wheaton, 1. 262, s. 6.
(u) L. iv. c. vi. s. 73: “Le Résident,” &c.
(x) Martens, s. 193, Notes, &c.
stated, viz., between agents accredited to the Sovereign, and agents accredited to the Minister.

CCXXIII. It has been already observed, that all these different classes enjoy equally the immunities (y) incident to the jus legationum (droit de léigation, d'ambassade, Gesandtschaftsrecht).

According to the fourth article of the Congress of Vienna, (1815), the rank of diplomatic agents between themselves was to be determined by reference to the date of the official notification of their arrival at the court to which they are accredited; and by the sixth article, as we have already seen (z), all distinctions of rank between diplomatic ministers, arising out of the ties of consanguinity and the domestic or political relations of their respective courts, are abolished.

CCXXIV. Every State may determine for itself what rank it will confer upon its diplomatic agents; nor is it restricted by International Law as to their number (a), their sex (b), their religion (c), or their station, whether lay or clerical, military or civil (d), unless the latter be opposed to a fundamental law of the receiving State. It is usual for States to send and receive diplomatic agents of equal rank.

A diplomatic agent may be accredited at one and the same time to various States, as the history of Germany and Switzerland abundantly testifies (e).

(y) Heffters, 208: “In Ansehung der gesandtschaftlichen Geschäfte selbst, der Fähigkeit dazu, und ihrer Giltigkeit, ist der ganze Rangunterschied völlig ohne Einfluss.”
(z) Vide ante, Chapter on Sovereigns.
Martens, s. 199.
(a) Miruss, s. 117.
(b) Martens, s. 120.
Moser, Die Gesandten nach ihren Rechten und Pflichten.—Kleine Schriften, t. 3, n. 2.
Miruss, s. 127.
(c) Vide post, Religion and the State.
The Bishop of Ross was Mary Queen of Scots' ambassador; the Bishop of Bristol was plenipotentiary at the Peace of Utrecht, the last instance of the diplomatic employment of an English Bishop.
(d) Klüiber, s. 187.
(e) Miruss, s. 120.
A diplomatic agent may be fully empowered to negotiate with foreign States, as at a congress of different nations, without being accredited to any particular court: or he may be accredited by a third State to mediate between two other States (f).

CCXXV. The legal status of mere agents employed, on behalf of Governments or Princes, in foreign countries, is not very clearly defined by any writer upon International Jurisprudence (g).

It is clear, however, that agents employed in adjusting private claims of the Sovereign, or negotiating a loan, commissioners to settle boundaries, and the like, are not virtute officii clothed with the immunities of a diplomatic agent. The same remark applies to secret emissaries of a State, though sent with the permission of the foreign State into its territory.

These commissioners or emissaries, though furnished perhaps with (h) letters of recommendation from their Sovereign, and therefore entitled to more consideration than private individuals, are not accredited, and therefore cannot claim the jus legationum.

If, however, the State clothe them with diplomatic powers, and accredit them to a foreign State, they become entitled to the immunities of a diplomatic agent (i).

(f) Miruss, s. 86, n. a.
(g) Wicquefort, l. pp. 62, 63.
Vattel, l. iv. c. vi. s. 75.
Heffters, s. 222.
Klüber, ss. 171, 172.
Martens, ss. 196, 197, and P. Ferreira's notes thereupon.
Miruss, ss. 107–111.
(h) Martens, s. 203.
(i) "Le mesme mot (Commissaire) a souvent une signification plus estendué, et marque un ministre qui n'a point d'autre qualité particuliere; et alors il peut estre ministre public, soit qu'il ait este envoyé à un congrès ou à quelque prince ou république." — 1 Wicquefort, 64.
Miruss, s. 86: Geschäftsgesandte.
"Si ce prince envoie un agent avec des lettres de créance, et pour
This is also the case, with deputies sent to a Congress on behalf of a Confederation of States, if they be accredited. The whole question depends upon whether or no the constituent body has been competent, and has intended to clothe them with a ministerial character.

CCXXVI. Consuls, generally speaking, are not entitled to the *jus legationum*. The institution of the consulate being of great importance and some complexity, must be reserved for a separate and distinct discussion (*k*).

*a*ffaires publique, l’agent est dès-lors ministre public: le titre n’y fait rien.” “Il faut en dire autant des députés, commissaires, et autres chargés d’affaires publiques.”—*Vattel*, *ibid*.

“Tout dépend de la question de savoir jusqu’à quel point leur constituant a pu et voulu leur attribuer un caractère ministériel.”—*Martens*, *ibid*.

(*k*) *Vide post*, Part Seventh, Chapter I.
CHAPTER X.

AMBASSADORS—INSTRUCTIONS.

CCXXVII. With reference to the State which he represents, the public character of the ambassador may be said to begin with the receipt of his instructions, which contain the measure of his responsibility to his own Government. These are for his own guidance; they may be secret or ostensible to the court to which he is accredited, or their partial or entire communication may be left to his discretion (a).

Despatches addressed to him after his departure may contain, in substance or in form, subsequent and additional instructions.

CCXXVIII. Vattel remarks, that if the ratification of the principal were not now held necessary for any engagement entered into by the ambassador, these instructions would be liable to those principles of construction which natural (b) law would apply to the matter of agency and procuration (procuration, mandement).

CCXXIX. With reference to the State to which he is sent, the public character of the ambassador receives its formal recognition on the production of his Letters of Credence.

(a) Vattel, l. iv. c. vi. s. 77.
Wheaton, 1. s. 288.
Martens, s. 205.
Bynkeshoek, Q. J. P. l. 2. c. vi.: "Legati quid rerum olim egerint, et nunc agant cum publice audiuntur."

(b) Here the Justinian Law would be almost necessarily resorted to. Minus, s. 133.
(lettres de créance, Creditiv, Credentialen, Beglaubigungsschreiben) (c).

This instrument is addressed by the Sovereign or chief magistrate of the State which the ambassador represents to the Sovereign or State to which he is sent. In the case of a chargé d' affaires, it is addressed by one Minister of Foreign Affairs to another (d). It contains the general purport of the mission, and the name and class of the diplomatic agent, and requests that faith may be given to his representations on the part of his principal (e). The same Letters of Credence may suffice for several ministers, if they be of the same rank.

Sometimes one minister is furnished with several Letters of Credence, if he be accredited to several Sovereigns or States, or to the same Sovereign in various capacities. If the rank of the diplomatic agent be changed during his residence at a foreign court, fresh Letters of Credence are required, and the ceremonies incident to their presentation are renewed (f). According to modern custom, the Full Power empowering the diplomatic agent to negotiate, is not inserted in the Letters of Credence, but is a separate instrument, drawn up in the form of letters patent (mandatum procuratorium, pleni-potencia, plein pouvoir, Vollmacht) (g).

(c) Vattel, l. iv. c. vi. s. 76: "Les lettres de créance sont l'instrument qui autorise et constitue le ministre dans son caractère auprès du prince à qui elles sont adressées. Si ce prince reçoit le ministre, il ne peut le recevoir que dans la qualité que lui donnent ses lettres de créance. Elles sont comme sa procuration générale, son mandement ouvert, mandatum manifestum."

Ibid. s. 83: "Dès qu'il est entré dans le pays où il est envoyé, et qu'il se fait connaître, il est sous la protection du droit des gens."

Heffters, s. 200.
(d) Martens, s. 202.
Wheaton, l. 267.
(e) Martens, ubi supr.
(f) Heffters, s. 210.
(g) Vattel does not mention the instrument of Full Powers as distinct from the Letters of Credence.

Miruss, s. 136, 1-141.
Martens, s. 204.
Wheaton, l. 268.
Heffters, s. 210.
CCXXX. It is the Full Power, whether it be a separate instrument or contained in the Letters of Credence, which founds the authority of the diplomatic agent as the representative of his Sovereign, and the terms of it are binding on him and his principal, though at variance with secret instructions.

This important principle of International Law, which clearly flows from the reason of the thing, is supported by the express authority of Grotius (h), and by the analogy of the law of mercantile agency as set forth in the Digest, which is in this instance, as in others, the written Law of Nations (i).

The Full Power may be general or special. The general Full Power (mandatum illimitatum) capacitates the holder of it for all the usual diplomatic functions, or for negotiating generally with a foreign State.

There are some instances of such a Full Power being construed as accrediting the bearer to all courts (actus ad omnes populos) (k); but this construction has long ceased to be maintained.

(h) Grotius, l. ii. c. xi. s. 12: "Sed et per hominem alterum obligamur, si constet de voluntate nostra, qua illum elegerimus ut instrumentum nostrum ad hoc speciatim, aut sub generali notione. Et in generali prepositione accidere potest, ut nos obliget qui praepositus est, agendo contra voluntatem nostram sibi soli significatam: quia hic distincti sunt actus volendi: unus, quo nos obligamus ratum habituros quicquid ille in tali negotiorum genere fecerit, alter, quo illum nobis obligamus ut non agat nisi ex prascripto, sibi non alis cognito. Quod notandum est ad ea, quae Legati promittunt pro Regibus ex vi instrumenti procuratorii, excedendo arcana mandata."

Ib. s. xiii.: "Atque hinc etiam intelligi potest exercitoriam et institoriam, quae non tam actiones sunt quam qualitates actionum, ipso naturali jure niti."

Bynk. Q. J. P. 1. ii. s. 2, c. 7.

(i) "Ut autem obtinuit, Jus Justinianaeum appellari Jus commune, ita vicissim Jus commune genere quodam reciprocationis, appellabitur Jus Cassareum."—Bynkershoeck, Q. J. P. 1. i. c. xxiv.

(k) Miruss, s. 137.

Klüber, s. 193, n. c, who says that two instances are found in Laméry Mémoires, viii. 748, ix. 653.

Mörteus, s. 204, n. 6, cites De Torey, Mémoires, t. iii. p. 65, and says,
The special Full Power (mandatum limitatum) authorises the holder of it to transact only a particular business: the limits of his authority are defined, and out of these he cannot travel.

CCXXXI. If these powers be granted to several persons, it should be expressed in them (l) whether they may act severally or only jointly in the execution of their office.

In time of peace, the diplomatic agent is sufficiently protected by the passport of his own Government. In time of war he must be provided with a pass of safe-conduct (sauf-conduit, salvi conductus literæ), to ensure his protection while travelling through the territories of the enemy of his State (m).

that the plein pouvoir given by the First Consul to Augereau, in 1800, to make peace with the princes of the empire, was of this description.

(l) Martens, s. 204.
(m) Miruss, s. 135.
Wheaton, l. 268, 269.
CHAPTER XI.

AMBASSADORS—ARRIVAL—AUDIENCE.

CCXXXII. Every diplomatic agent must notify his arrival to the Minister for Foreign Affairs (a).

If the diplomatic agent be of the first class, his arrival is communicated through the Secretary of the Embassy, or some other gentleman (Gesandtschaftscavalier) attached to the mission.

He delivers a copy of the Letters of Credence to the Minister for Foreign Affairs, and requests an audience for his principal with the Sovereign.

This audience may be either public or private: diplomatic agents of the first class are alone entitled to the former. But this audience is not a necessary preliminary to his entering upon the performance of his functions.

The public audience used to be preceded by a solemn entry (entrée solennelle), the details of which, such as the number of horses which may draw the ambassador's coach, the staircase by which he is to ascend, and the like, have been dwelt upon with patient and characteristic minuteness by many German publicists. The ceremony has now fallen into general desuetude (b).

At the audience, which is now usually private, the Letters of Credence are delivered, a complimentary speech is made by the ambassador, and replied to by the Sovereign.

(a) Martens, s. 206.
Miruss, s. 307.
Wheaton, l. 270.

(b) "Au reste, toute cette pénible cérémonie de l'audience solennelle est peu nécessaire, même à un ambassadeur, pour entrer en fonctions," &c.
Martens, ibid.
AMBASSADORS—ARRIVAL—AUDIENCE.

CCXXXIII. If the diplomatic agent be of the second or third class, his arrival is notified by a letter to the Minister for Foreign Affairs who is requested to take the orders of his Sovereign respecting the delivery of the Letters of Credence.

It should seem that the majority of European courts would concede to these diplomatic agents the privilege of a public audience (c). In practice, however, the Sovereign usually receives them at a private audience, at which the Minister for Foreign Affairs restores to them their Letters of Credence.

If the diplomatic agent be of the fourth class, if he be a Chargé d'Affaires not accredited to the Sovereign, his arrival is notified by letter to the Minister for Foreign Affairs, of whom alone an audience is requested, for the purpose of delivering the Letters of Credence (d).

"In Republican States," Mr. Wheaton observes, "the "diplomatic agent is received in a similar manner by the "chief executive magistrate or council charged with the "foreign affairs of the nation." It should seem, however, that though there is less uniformity in republican courts as to the observance of the ceremonies of a public audience, they have nevertheless retained the principal circumstances of the etiquette practised by monarchical courts upon these occasions (e).

CCXXXIV. The rules of etiquette which long usage has established between diplomatic agents resident at the same foreign court, and towards the members of the foreign Government, occupy many pages of some works upon International Law; but these rules, though their observance on the ground of convenience be very desirable, and their non-observance would denote ill-breeding in the State

(c) Martens, s. 207.
Miruss, s. 311, would seem to deny this.
(d) Wheaton. ibid.
(e) Martens, s. 206.
renouncing them, do not arrive at the dignity of laws, or attain the character of rights (f).

CCXXXV. Merlin's remark is sound and just, that there is but one general rule on this subject: namely, that public ministers should receive all the distinctions which etiquette and the manners of each nation have determined, as marks of that estimation which is befitting.

It must be remembered that custom may impart a value to a ceremony in itself indifferent, but which has become significant of the estimation in which the object of the ceremony is held. We have seen an instance of this in the honours of the salute paid to the flags of nations. When usage has attached a real value to a point of etiquette, the omission of it is not justifiable by any principle of International Law (g).

CCXXXVI. Nevertheless, it must always be competent to a Sovereign to make alterations in the ceremonies of his court: he must, of course, be prepared for two consequences—one would probably be, that foreign nations will refuse to accredit diplomatic agents to him to be received upon the footing of these alterations; another, in all likelihood, would be, that he must submit himself to retaliatory alterations, in the person of his own representatives, at foreign courts (h).

CCXXXVII. (i) The mission of a diplomatic minister may be:—

(f) Wheaton, 1. 272.
Merlin, ibid, s. iv.

(g) "Quand une coutume," says Vattel, "est tellement établie qu'elle donne une valeur réelle à des choses indifférentes de leur nature, et une signification constante suivant les mœurs et les usages, le droit des gens naturel et nécessaire oblige d'avoir égard à cette institution, et de se conduire, par rapport à ces choses-là, comme si elles avaient elles-mêmes la valeur que les hommes y ont attachée."—L. iv. c. vi. s. 79.

(h) Merlin, s. iv.
See also Martens, s. 184, upon this point.

(i) Martens, l. iv. c. 3, s. 148.
Miruss, ss. 366-370.
1. Altered in its rank or character.
2. Suspended.
3. Entirely closed or ended.

CCXXXVIII. It is altered in its character when the grade of the embassy is heightened or lowered, when an envoy becomes an ambassador, or vice versa, or when an ambassador, sent on an affair of ceremony, becomes a resident ambassador. By such changes as these the embassy is not suspended or ended, but only changed, as to its diplomatic rank or character.

CCXXXIX. Various events may happen which suspend the functions of the ambassador; for instance, the death of his Sovereign may have this effect only, though it may also end his mission. During this interval, however, he enjoys all the privileges of inviolability and exterritoriality which appertain to his office. These remain until his embassy be bona fide terminated, and until he has left the territory of the State to which he has been accredited. Thus Grotius observes: "In itu continuo et de reditu censetur, non hoc "ex vi verbi, sed ut absurdum vitetur: neque enim inutile "esse beneficium debet. Et abitus tutus intelligendus "usque dum eo pervenerit ubi in tuto sit" (k).

CCXL. The mission is ended by:
1. The lapse of a particular period, as in the case of an ambassador appointed ad interim, when the regular ambassador returns to his post.
2. By the accomplishment of the particular object of the mission, as in the case of an embassy sent for the purpose of congratulation, or to represent a State at a particular ceremony; or when there has been a special and limited object to the mission, which has either been attained or has failed.
3. By the death, abdication, or dethronement of the

Klüber, ss. 228-230.
Wheaton, Dr. Int. i. ss. 23, 24.
(k) L. iii. c. xxi. 16.
Sovereign accrediting the ambassador, or by the death of the Sovereign to whom he is accredited. In both these cases, according to International Usage and Practice, the ambassador must be accredited anew by his Sovereign; though, in cases in which it is known that his mission is only suspended, and that he will be re-accredited, it is usual to continue to transact business, sub spe rati, with him as ambassador.

4. By the formal declaration of the ambassador, on account of some injury or insult, or of some pressing urgency, that his mission must be considered as closed.

5. By the act of the court to which he is accredited, when that court, on the ground of his misconduct, or of a quarrel with his Government, orders the ambassador to leave the territory, without waiting for his formal recall.

6. By the voluntary resignation of his office by the ambassador himself.

7. By his recall by the Government which accredited him.

CCXLI. In the last-mentioned case it is usual for the ambassador to request an audience, more or less formal, according to circumstances, with the Sovereign to whom he is accredited, and to deliver to him the order or letter recalling him (lettres de rappel, Zurückberufungsschreiben). He afterwards usually receives, in return, letters or papers to facilitate his return (what are termed lettres de récréance (I), recreditio), and his passport, and sometimes a present; but the Republic of the North American United States follows the example of the ancient Republic of Venice, and forbids her representatives to accept any such present.

(I) "Récréance est aussi en usage dans cette phrase, lettres de récréance, qui se dit, soit des lettres qu'un prince envoie à son ambassadeur, pour les présenter au prince d'auprès duquel il le rappelle ; soit des lettres que ce prince donne à un ambassadeur, afin qu'il les rende, à son retour, au prince qui le rappelle. Le roi de Prusse envoya une lettre de récréance à son ambassadeur pour le faire revenir. Le roi d'Espagne donna une lettre de récréance à l'ambassadeur de France, lorsqu'il prit son audience de congé."—Dict. de l'Acad. v. Récréance.
CCXLII. When the death of the ambassador himself ends his mission, the first step that the Secretary of Legation—or, in his default, some Minister of an allied Power—takes is to affix a seal upon his official papers, and, if necessary, upon his moveables. It is only a case of necessity that warrants the interference of the local authority. His corpse is entitled to a decent burial at the place of his death, or it may be removed for the purpose of interment elsewhere; and it is exempted from any mortuary dues usually payable in the country. All questions relating to his moveable property, whether he died testate or intestate, are, by a long-established rule of International Comity, determinable only by the laws of his domicil or of his own country. His moveables are also exempt from any kind of tax or impost (droit d'aubaine, detractio). It is usual also to continue to the widow, family, and suite of the deceased, the privileges and immunities incident to his office, for such limited period as may reasonably suffice to enable them to leave the country.
PART THE SEVENTH.

CHAPTER I.

CONSULS—HISTORICAL INTRODUCTION.

CCXLIII. In the second chapter of the former volume of this work (a), mention was made of a class of public officers who, though not clothed, accurately speaking, with a representative character, are entitled to a quasi-diplomatic position, namely Consuls (b).

It is proposed now to take into consideration the character and functions imparted by International Law to this class of public officers.

CCXLIV. The institution of a Foreign Consulate, within the territory of an independent nation, is a most important result of International Comity; but inasmuch as Custom, Prescription, and Treaty have placed the Resident Consulate, as much as the Resident Embassy, within the domain of Right, it seems more properly discussed in this portion of the work than in that portion which is devoted to the exclusive consideration of questions relating to International Comity (c). The origin of this institution is probably traceable to that Domestic Consulate which, after the fall of the Western Empire, was, during the earlier part of the Middle Ages, founded in most of the maritime cities of the south of

(a) Vide ante, vol. i. p. 10.
(b) Miltitz, Manuel des Consuls, t. i. p. 6; a work of marvellous research and great ability.
(c) Vide ante, vol. i. pp. 12, 13, et præsertim, pp. 182, 183.
Europe connected with commerce and navigation, the juris-
prudence and authority of which rested mainly upon principles
 gleaned from the Roman and Greek Law.

The tribunals of the domestic institution were occupied by
judges (d), known by the name of *Judges Consuls*, or *Consuls
Marchands*; while the foreign institution was dependent on
certain officers known by the title of *Consuls d'outre mer*, or
*Consuls à l'étranger*. These latter officers were persons sent
by independent countries, or free cities, to the seaports and
adjacent towns of foreign kingdoms, for the purpose of protect-
ing the national commerce, especially in matters of shipwreck,
of watching over national interests and privileges, and of ad-
justing disputes between national sailors and merchants (e).

The perils to which infant commerce was exposed, and the
insecurity of personal intercourse with foreigners during the
times of oppression which followed the overthrow of the
Western Empire, rendered the two following objects matters
of the greatest importance:

1. The obtaining in foreign countries a place of *safe
deposit* for merchandise.

2. A *jurisdiction* within the limits of it, independent of
the country in which it was situated.

About the eleventh century *depositories* and a *jurisdiction* in
Europe, for the purpose of taking cognizance of all questions
of this kind, sprang into existence under the protection of

(d) The term "consulaire" is still used as synonymous with "com-
mercial" on the Continent. "Sentence consulaire," "condamnation con-
sulaire," "jurisdiction consulaire," as expressing the attributes and powers
of "tribunaux de commerce."—*De Martens, Le Guide diplomatique*,
t. i. p. 238, notes.

(e) The first chapter of the famous *Consolato del Mare* is in these
words:—"Sogliono ogn' anno, il di del Natale del nostro Signore, all'ora
del vespro, gli uomini da bene naviganti, e padroni, marinari, o tutti, o maggior parte di quelli, ragunarsi in consiglio, in un luogo da loro eletto, e deputato, come per usanza hanno nella Città di Valenza; e quivi per elezione, e non per sorte, tutti insieme raccolti, o la maggior parte di loro, eleggono due uomini da bene, dell' arte del mare, per loro Consoli, e per Giudici un' altro della medesima fazione del mare, e non d' altro qualsisia ufficio o arte; e questo eleggono per
Consuls upon the shores of the Mediterranean Sea; and in the East, the establishment of similar institutions upon the coast of Syria was one of the immediate consequences of the Crusades. The establishment of factories in Greece by the inhabitants of Amalphi and Venice, indeed, preceded the Crusades, while the establishment of factories in Syria was the fruit of those conquests. These were at first under the protection of the Christian and Frank sovereignties, which, from the conquest of Palestine till the thirteenth century, maintained their position in the East.

During this period, a system seems to have prevailed that every European should be amenable only to the law of his native country (f). After this period, when the East had fallen under the captivity of Islam, treaties were entered into (of which the fourteenth century furnishes abundant examples) between the Christian and Moslem Powers, and especially in Egypt, which confirmed the establishment of European consulates in Mahometan countries.

About the same time the institution began to extend itself, keeping pace with the extension of trade, beyond the limits of the Mediterranean, over the northern and eastern coasts of Europe. In the ports of the Baltic and the Mediterranean especially, foreign merchants inhabited particular quarters of the town, subject to the jurisdiction and authority of their Consuls, who were also designated by various titles, according to the customs of various countries, viz.: Governors, Protectors, Ancients, Aldermen (g), Syndics, Jurats, Précosts, Giudice delle appellazioni, le quali appallazioni si fanno delle sentenze date per i predetti Consoli. E le sopradette elezioni si fanno per vigore de' privilegi ottenuti dal Re, e dagli antecessori di quello, quali privilegi hanno gli uomini da bene della sopradetta arte del mare." Then follow several chapters as to the mode of exercising their jurisdiction, both by the Consuls and the Court of Appeal.

(f) Vide post, Domicil, vol. iv.
Militiz, l. ii. c. 1. Résumé ph, 304-401.
Heßler, Drittes Buch, iii. Die Consula, s. 224.
(g) Appellation of the Hanse Towns.
Capitouls, Échevins, and who administered justice to their fellow-countrymen according to their national laws, and maintained the privileges conceded to them in all matters, especially as to the use of the weights, measures, and coins of their respective countries.

The organisation of the Consulate was more or less complete, as the interests which the Consul had to protect were more or less regular, as the obstacles they had to encounter were greater or less, as the Municipal Laws of the State in which they were established were more or less penetrated by the commercial spirit. The Levant produced the best specimens of the institution; and Venice, Genoa, Marseilles, and Barcelona appear to have been the cities in which it attained the greatest perfection (h).

At this time, when the faith of treaties was little respected; when even alliances of States, subjected as they were to frequent violations, offered but a feeble guarantee for the security of life and property to the stranger; when one nation generally regarded the trade of another as an injury to her own subjects; when embassies were of rare occurrence and of short duration, and when there were no Resident Ambassadors, International Commerce would have withered away without the protecting shadow of the Consulate. Consuls alone, at this time, enjoyed the full privileges of the *jus gentium*, and all the immunities accorded at the present time to Ambassadors.

Before the middle of the seventeenth century, however, a great change had been effected in the whole condition of International Commerce and of International intercourse generally. About this time, permanent and perpetual legations had become a part of the received Public Law of Europe; the idea of national independence, moreover, had taken deep root, and the *exterritorial* jurisdiction, both criminal and civil, of the Consuls was wholly at variance with this principle; at the same time the general refinement

(h) Müllitz, l. ii. c. 2, s. viii. p. 492.
of manners, and the improvement of Municipal Law, rendered it less necessary; and throughout Christian Europe, this jurisdiction passed into the hands of the territorial authorities.

The mediæval institution of consular jurisdiction, under the influence of these causes, entirely changed its condition and character, and shrank into a general vigilance of the Consul over the interests of the shipping and navigation of his nation, and into a kind of authority, not very accurately defined (i), over the members of it at a particular locality.

This is the position which, in Christian countries, the Consulate occupies at the present day. In Mahometan countries, however, Consuls have retained, by virtue of express stipulations in treaties, the jus gentium incident to accredited Ministers, together with the especial prerogatives of jurisdiction, which have been alluded to (k).

CCXLV. The status of the Consulate, therefore, at the present time seems to require a twofold division, viz.:

1. The legal status of Consuls in Christian countries.
2. The legal status of Consuls in the Levant and in Mahometan countries.

(i) "A l'aimable, aimablement," in the Consular Instructions put forth by France and Greece.

(k) Miiîitz, l. iii. c. l.
Bynkershoek, De Foro Leg. vol. vi. c. x.
Martens, Droit des Gens, l. iv. c. iii. s. 147.
Vattel, l. ii. c. ii. s. 34.

Bluntschi, Introd. p. 23: "Le nouveau droit international connaît à côté des Légations le système des Consulats. Le nombre des consuls est beaucoup plus considérable que celui des représentants diplomatiques des états, et tend à s'augmenter beaucoup. Les consulats, répandus sur toute la surface terrestre, enveloppent le globe comme un réseau de postes internationaux; ils facilitent les relations pacifiques entre les nations, et donnent plus d'intensité à la vie commune et aux intérêts communs des peuples. Les consuls ne sont pas, comme les diplomates, les représentants des états; ils ont surtout à protéger à l'étranger les intérêts de leurs nationaux, et à procurer aux droits de ces derniers la protection qu'on leur accorde dans la patrie. C'est pour cela que l'importance des consulats augmente en proportion du développement et des progrès des relations entre peuples."
CHAPTER II. (a).

MODERN CONSULATE IN CHRISTIAN COUNTRIES.

CCXLVI. Consuls in Christian countries are not, legally speaking, Public Ministers of the State to which they belong, though having a public character, they are under a more special protection of International Law than uncom-

(a) Kent's Commentaries, &c. vol. i. part 1, l. ii. p. 41.
Wheaton's Hist. p. 244.
Wheaton's Elements, &c. vol. i. p. 282.
Fynn's British Consul Abroad, passim.
Wildman's Int. Law, vol. i. p. 130; vol. ii. p. 41.
Heffers, Dritten Buch, p. 223.
Ortolan, Dipl. de la Mer, t. i. p. 275.
De Martens et De Cussey, i. Index expl. "Consuls."
Wicquefort, t. i. s. 5. p. 1.
Volin, Ord., vol. i. l. 1. t. 9. De Consuls.
Saalfeld, Handbuch des positiven Völkerrechts, p. 117, s. 55. A very useful and correct summary of the duties and rights of Consuls.
Report from the Select Committee on Consular Establishments, laid before Parliament, 10th August, 1835.
Fodis, Droit international privé, ch. Exterritorialité.
Flassan, Histoire générale et raisonnée de la Diplomatie française, t. i. vii.
Le Guide diplomatique, par le B. Charles de Martens, t. i. c. 12, p. 236. (4th ed. 1851.)
Regulations prescribed for the use of the Consular Service of the United States, Washington, 1870.
Instructions to Consuls relative to the Merchant Shipping Act, prepared by Board of Trade, London, 1855.
On the 23rd of February, 1871, the House of Commons appointed a committee "to enquire into the constitution of the diplomatic and consular services, and their maintenance on an efficient footing, required by the political and commercial interests of the country."
missioned individuals. This protection they have a right to claim both from the State which sends, and from the State which admits them. But they are not the representatives of their State, nor entitled to any of the privileges and immunities accorded to such representatives, whether they be full ambassadors or simple chargés d'affaires, and for these more especial reasons:

1. They are not, except in cases where they are also chargés d'affaires (b), furnished with credentials (lettres de créance), but with a mere commission (lettres de provision) to watch over the commercial rights and privileges of their nations.

2. They cannot enter upon the discharge of their functions without the permission and confirmation of their commission by the Sovereign of the country to which they are deputed. That commission is termed the exequatur, and may, at any time, be revoked by such Sovereign (c).

3. As a general rule, they are amenable to the civil and criminal jurisdiction of the country in which they reside. Vattel's position, that they are exempted from the latter, is wholly unsupported by the requisite proof (d).

(b) The Consuls-General of France, at Cairo, Tunis, Tripoli, and in the capitals of the South American Republics, and also, it is believed, at Canton and Manilla, are chargés d'affaires, as well as Consuls. The French agent at Bucharest is accredited as "Agent et Consul-Général." The powers of these Consuls are of a much more extended character than those of the ordinary European Consuls.—De Martens, ib. i. 257, n. Bluntschli, s. 250.

(c) Bluntschli, s. 246.

(d) Vattel, t. i. 1. ii. c. ii. s. 34: "Ses fonctions exigent premièrement qu'il ne soit point sujet de l'état où il réside; car il serait obligé d'en suivre les ordres en toutes choses, et n'aurait pas la liberté de faire les fonctions de sa charge. Elles paraissent même demander que le Consul soit indépendant de la justice criminelle ordinaire du lieu où il réside, en sorte qu'il ne puisse être molesté, ou mis en prison, à moins qu'il ne viole lui-même le droit des gens par quelque attentat énorme." "Et bien que l'importance des fonctions consulaires ne soit point assez relevée pour procurer à la personne du Consul l'inviolabilité et l'absolue indépendance dont jouissent les ministres publics, comme il est sous la protection particulière du souverain qui
4. They are subject to the payment of taxes.
5. The permission to have places of worship in their houses is very rarely accorded to Consuls (e).
6. They have no claim to any foreign ceremonial or mark of respect, and no right of precedence, except among themselves according to the rank of the different States to which they belong, but they have a right to place the arms of their country over the door of their residence.

{l’emploie, et chargé de veiller à ses intérêts, s’il tombe en faute, les égards dus à son maître demandent qu’il lui soit renvoyé pour être puni. C’est ainsi qu’en usent les états qui veulent vivre en bonne intelligence. Mais le plus sûr est de pourvoir, autant qu’on le peut, à toutes ces choses, par le traité de commerce.”

“On peut accorder” (says De Martens, l. iv. c. iii. s. 148, note) “que la plupart des états ne refuseraient pas l’extradition.”

“Considering the importance of the consular functions, and the activity which is required of them in all great maritime ports, and the approach which Consuls make to the efficacy and dignity of diplomatic characters, it was a wise provision in the constitution of the United States which gave to the Supreme Court original jurisdiction in all cases affecting Consuls, as well as Ambassadors and other public Ministers; and the federal jurisdiction is understood to be exclusive of the State Courts.”—1 Kent, 45.

(e) The second separate article of the Treaty between France and the Hanse Towns, stipulated 1716.

“I. Que si un ministre de Sa Majesté, résidant dans une desdites villes, vient à y décéder, il sera permis à sa famille, héritiers, ou ayant cause de continuer, en payant le loyer, d’y tenir chapelle, ainsi qu’elle s’y tena it pendant la vie dudit Résident, et ce pendant trois mois seulement, à compter du jour de son décès, à moins que Sa Majesté, avant ce temps-là, n’eût choisi une autre maison dans laquelle l’établissement d’une chapelle aurait aussitôt été fait, auquel cas elle cessera dans la maison dudit défunt.

“II. Que le Roi donnera des ordres précis et effectifs dans tous les ports et lieux nécessaires, pour qu’il ne soit apporté aucun trouble ni empêchement aux sujets desdites villes de Lubeck, Bremen, et Hamburg, lors de la cérémonie des obsèques de ceux d’ent’euex qui seront décédés, dans l’étendue des terres de l’obéissance de Sa Majesté, et ce sous peine de prison contre les contrevenans, et de telle amende qu’il appartiendra.”—Schmauss, ii. 1628.

See Wench. vol. iii. p. 769, for the Treaty between France and Hamburg, A.D. 1769.

Pynn, 13.
De Martens, Dr. des Gens, i. 149.
CCXLVII. De Martens (f) is of opinion that, unless they have engaged in trade, or become owners of *immovable* property in the country, they cannot be arrested or incarcerated for any less offence than a criminal act. As a part of the results of the memorable action at Algiers, Lord Exmouth demanded and obtained full compensation from the Dey for all injuries and losses inflicted on the British Consul, and caused him to beg pardon, in terms dictated, for having imprisoned him; moreover, he insisted on the release (g) of the Spanish Vice-Consul, imprisoned upon a fictitious charge of debt.

When the French protectorate (h) had been established by Admiral Dupetit Thouars over Tahiti, in 1842, the French found themselves the objects of ill-concealed hostility. This they attributed to the influence of the English missionaries in the island. A Mr. Pritchard, who had gone out originally as a missionary, was at this juncture acting as British Consul. He had, indeed, a short time previously, notified to the English Government his resignation of that office; but, as intelligence of the acceptance of this resignation had not reached Tahiti, he was still clothed with the character and exercising the functions of Consul. The French officers looked upon him as the chief author of the disturbances that broke out from time to time, and of the opposition evinced to their authority. On the night of the end of March, in 1844, a French sentinel was attacked by the natives. The French determined to make Mr. Pritchard responsible for this act. Accordingly, on the evening of the 5th of March, as Mr. Pritchard was leaving his house, he was seized by the Commandant of Police, with some soldiers, who hurried him off to prison, where he was kept in close confinement. The following paper was circulated in the French, English, and Tahitian languages:—


(g) Annual Register, 1816, pp. 104, 237, 238, 239.

(h) This account is taken from the *Annual Register for 1844*. 
“French Establishment in Oceania.

"A French sentinel was attacked in the night of the 2nd to the 3rd of March. In reprisal, I have caused to be seized one Pritchard, the only daily mover and instigator of the disturbances of the natives. His property shall be answerable for all damage occasioned to our establishments by the insurgents; and if French blood is spilt, every drop shall recoil on his head.

"D'AUBIGNY,

"Commandant Particular to the Society Islands.

"Papiti, 3rd March."

At the intervention of Captain Gordon, of the British war steamer Cormorant, Mr. Pritchard was released from prison, on condition that he should not be again landed on the Society Islands; without taking leave of his family, he was conveyed in the Cormorant to Valparaiso, where he embarked in the Vindictive, and was brought to England.

When the news of this outrage reached England, a natural feeling of indignation was loudly expressed; and the then Prime Minister, Sir Robert Peel, in his place in the House of Commons, declared that "a gross outrage, accompanied with gross indignity, had been committed upon Mr. Pritchard;" at the same time he stated that, as this act had not been done in consequence of any authority given for that purpose by the French Government, he entertained a strong hope that it would at once make the reparation which Great Britain had a right to require.

In this expectation Sir Robert Peel was not disappointed. On the last day of the session of the British Parliament, the 5th of September, he was enabled to state in the House of Commons that the discussion between the two Governments, relative to the Tahitian affair, had been brought to an amicable and satisfactory termination. This was effected by the payment, on the part of the French Government, of a sum of money to Mr. Pritchard, as an indemnity or com-
pensation for the outrage which had been offered to him by the French in the island of Tahiti (i).

CCXLVIII. The privileges of Consuls, so far as they are derived from the country to which they are sent, are, generally speaking, an exemption from any personal tax, and generally from the liability to have soldiers quartered in their houses; and in cases where the ambassadors are absent, or non-resident, they have a right of access to the authorities of the State in which they reside. They are usually allowed to grant passports to subjects of their (the consuls) own country, living within the range of their consulate, but not to foreigners. As a general rule (k), the muniments and papers of the Consulate are inviolable, and under no pretext to be seized or examined by the local authorities.

CCXLIX. As a general rule, too, Consuls in Christian countries have no contentious jurisdiction over their fellow-countrymen, but simply a sort of voluntary jurisdiction—a power of arbitration (juridiction arbitrale) in disputes, more especially those relating to matters of commerce (l). Their functions must, in great measure, depend upon the municipal law of their own country. No contentious juris-

(i) Annual Register, 1844, pp. 200, 201.

(k) Mr. Fynn, in his work on the British Consul Abroad, observes (p. 17): 'A Consul, however, is distinguished from the merchants or inhabitants of the place where he is appointed to by various privileges, derived from treaties, or founded on usage. He is respected in a particular manner; on his arrival he is allowed a free entry for his furniture and baggage; he is exempt from the excise or inland duties on liquors and other articles of consumption, for himself and family; he is entitled to a seat on the Bench with the magistrates of the place, whenever he is obliged to appear at their assemblies; to act as Counsel for the subjects of his nation, in all cases of dispute between them and the natives of the place. He is exempt from lodging the military in his house; and is to be furnished with a guard, when he requires one, to aid and assist him in the maintenance of his authority over the subjects of his own country trading to where he is located; and all masters of vessels are to show him respect and obedience.'

(l) De Martens, Dr. des Gens, i. 251.
diction can, according to the doctrine laid down in a former chapter, be exercised over their fellow-countrymen without the express permission of the State in which they reside; and no Christian State has as yet permitted the criminal jurisdiction of foreign Consuls. But usage, and the rule adopted in most treaties, concede to the Consul the assistance of the local police when it may be necessary for the exercise of his functions over the seamen of merchant-vessels belonging to his own country (m).

In England it has been decided that in a suit for wages by seamen on board a foreign vessel, the Court of Admiralty has jurisdiction, but will not exercise it without first giving notice, in accordance with the directions of the tenth of the Rules and Orders of 1859 for the practice of the High Court of Admiralty, to the Consul of the nation to which the foreign vessel belongs; and if the Consul, by protest, objects to the prosecution of the suit, the Court of Admiralty will determine whether it is fit and proper that the suit should proceed or be stayed. Such protest does not, ipso facto, operate as a bar to the prosecution of the suit, as the foreign Consul has not the power to put a veto on the exercise of jurisdiction by the Court of Admiralty.

In such a suit it makes no difference that the plaintiff is a British subject; it is the nationality of the vessel, and not the nationality of the individual seaman suing for his wages, that regulates the course of procedure (n).

The cases in the American Courts may be also consulted on this subject; they contain the following propositions:—

"A suit cannot be brought in a State Court against a "Consul of a foreign Government, admitted as such by the "Government of the United States. He does not waive

---

(m) De Martens, ib. i. 287.
The Franz et Élise, 5 L.T. N.S. 291.
See also Bluntschli, s. 252: "Les Consuls n'ont aucune juridiction contentieuse, à moins qu'elle ne leur ait été expressément conférée par le Gouvernement du pays où ils résident."
"his privilege by appearing in the State Court, and pleading to the merits" (o).
"A Consul represents the subjects of his nation, if they are not otherwise represented" (p).
"A Consul of a foreign Power, though not entitled to represent his Sovereign in a country where the Sovereign has an ambassador, is entitled to intervene for all subjects of that Power interested; and though he should set forth the particulars of his claim, still it will be sufficient if they can be fully gathered from the allegations of the libel, and the case it sets forth" (q).
"A Consul, though a public agent, is supposed to be clothed with authority only for commercial purposes; he has a right to interpose claims for the restitution of property belonging to the subjects of his own country, but he is not entitled to be considered as a Minister, or diplomatic agent of his Sovereign, intrusted, by virtue of his office, with authority to represent him in his negotiations with foreign States, or to vindicate his prerogative" (r).
"Although a foreign Consul is admitted to interpose a claim in the Admiralty for unknown subjects of his nation, yet, before restitution can be decreed, proof of the individual proprietary interest must be exhibited" (s).
"A foreign Consul has a right, without special authority from those for whose benefit he acts, to institute a proceeding in rem, where the rights of the property of his fellow-citizens are in question" (t).

CCL. It has been observed, that the institution of the Consulate is a result of International Comity; and that the

(o) Valarino v. Thompson, 3 Seldon (N.S.) 576.
(p) Gernon v. Cochran, Bee, 209.
(q) Robson v. The Huntress, 2 Wallace, 50.
(r) The Anne, 3 Wheat. 435.
(s) The Antelope, 10 Wheat. 66.
(t) The Bella Corrones, 6 Wheat. 152.
See also Pritchard's Admiralty Digest, p. 91 (ed. 1861), tit. Consuls.
refusal to receive a foreign Consul is no breach of strict International Law. But a Consul, admitted without any express stipulation, is entitled to the same privileges as his predecessors have enjoyed, upon the general principle mentioned in a former chapter, that every nation is presumed to follow custom and usage in its treatment of foreigners, and is bound to give previous warning of its intention, if it have any, of adopting a different course with respect to them (u). As a general rule, and in the absence of any treaty upon the subject, the Consul looks for his authority and functions to the diplomatic instrument by which he is appointed to his office, to the exequeratur which empowers him to exercise them, and to any modification which the particular law or custom of the country in which he is placed may apply to them (x); and he must always remember, that the principal end and object of the Consulate is to protect the external commerce and the national navigation of his own country in the rights secured to them by usage or treaty.

CCLI. Some nations permit, and others forbid, their Consuls to trade; a trading Consul is, in all that concerns his trade, liable to the local authorities in the same way as any native merchant. In fact, sometimes natives of the place itself in which consular services are required, are appointed Consuls; and thus are, at one and the same time, the subjects of the country in which they dwell and the agents of a foreign State. Such an appointment is, perhaps, rightly pronounced, by a considerable authority, to be objectionable in principle (y). The prerogatives of such Consuls are very limited; the only exemptions which they appear to

(u) Vattel, t. i. liv. ii. c. ii. s. 34: "Au défaut des traités, la coutume doit servir de règle dans ces occasions; car celui qui reçoit un Consul sans conditions expresses, est censé le recevoir sur le pied établi par l'usage."

(x) De Martens, ib. i. 200-265.

enjoy are from lodging soldiers and from personal service in the civic guards or militia (z).

CCLII. Such an appointment cannot, of course, be made without the sanction of the Sovereign, though a condition of this kind has sometimes formed the subject of an express provision of a treaty. Thus, in the Treaty of 1753, between the Crown of the Two Sicilies and the Republic of Holland, it is provided:—

"L'on fera attention, de part et d'autre, de nommer pour "Consuls dans les États respectifs, comme ci-dessus, de pro-"pres sujets naturels; et si l'une des parties contractantes "nommait pour son Consul, dans les États de l'autre, un "sujet de celle-ci, il sera libre à cette dernière de l'admettre, "ou non" (a).

CCLIII. Consuls-General are sometimes appointed. These officers exercise their functions over several places, and sometimes a whole country; and, generally speaking, Consuls and Vice-Consuls are under their control.

CCLIV. The appointment of Vice-Consuls is also sanctioned by the practice of nations.

English Vice-Consuls are usually appointed by the Consul, subject to the approbation of the Foreign Secretary of State, and, as a general rule, the English Vice-Consul corresponds directly with the Consul, but in special cases with the Foreign Secretary, in the first instance (b).

CCLV. The Treaties which have reference to this subject appear to admit of the following classification:—

1. Treaties between Christian European States.
2. Treaties between Christian European States and the States of North and South America.
3. Treaties between the States of North and South America.

(z) De Martens, Le Guide diplomatique, i. 398.
(b) Fynn, p. 6.
4. Treaties between Christian States and Infidel or Heathen States.

5. Treaties between Christian States other than those in Europe and America.

The Treaties relating to this subject are very numerous; as far as I have been able to ascertain, those, down to the year 1869, which principally illustrate the functions, powers, and privileges of Consuls are, according to the above-mentioned classification, the following:

1. Treaties between Christian European States.

*France* with Spain, 1768-1769, 1862.

,, with Great Britain, 1787.
,, with the Netherlands, 1840, 1865.
,, with Russia, 1787.
,, with Portugal, 1667, 1797.
,, with Belgium, 1861.
,, with Italy, 1862.
,, with Mecklenburg-Schwerin, 1865.
,, with the Hanse Towns, 1865.

*Austria* with Spain, 1725.
,, with Greece, 1835.
,, with Russia, 1860.

*Denmark* with Spain, 1641, 1742.
,, with Russia, 1782.
,, with Belgium, 1863.

*Kingdom of the Two Sicilies* with the Netherlands, 1753.
,, ,, ,, with Russia, 1787.
,, ,, ,, with Sweden, 1742.

*Italy* with Russia, 1863.
,, with Belgium, 1863.

*Prussia* with Portugal, 1844.
,, with Belgium, 1863.
,, with the Netherlands, 1856 (c).

*Hamburg* with Belgium, 1863.

(c) This treaty is very important as to the admission of Consular Agents in the principal ports of the Dutch colonies.
Lubeck with Belgium, 1863.

Great Britain with France, 1787 (vide ante).

" with Portugal, 1849.
" with Russia, 1843, 1859.
" with Spain, 1665, 1667, 1751.

Spain with the Netherlands, 1714, 1816.

" with Great Britain (vide ante).

Switzerland with Belgium, 1862.

Sweden and Norway with Belgium, 1863.

2. Treaties between the States of North and South America and Christian European States.

a. North America:—

United States of North America with France, 1788, 1800.

" " with Denmark, 1826, 1861.

" " with Spain, 1795, 1819.

" " with Great Britain, 1806.

" " with Prussia, 1828.

" " with Sweden, 1816, 1827.

" " with Austria, 1829.

b. Central and South America:—

Mexico with France, 1827.

" with Great Britain, 1826.

" with the Netherlands, 1827.

" with Belgium, 1861.

" with the Zollverein, 1855.

New Granada with France, 1840, 1857.

Brazil with Denmark, 1828.

" with Great Britain, 1827.

" with Prussia, 1827.

" with France, 1860 (d).

" with Portugal, 1863.

Bolivia with Belgium, 1860.

(d) This treaty relates to Consuls entirely.
Nicaragua with France, 1859.
   , with England, 1860.
Venezuela with Denmark, 1862.
   , with Italy, 1861.
   , with the Hanse Towns, 1860.
Honduras with France, 1856.
Argentine Confederation with Sardinia, 1855.
   , with the Zollverein, 1857.
Peru with Italy, 1863.
   , with France, 1861.
Uruguay with the Zollverein, 1856.
Paraguay with , 1860.
Texas with France, 1839.
Rio de la Plata with Great Britain, 1825 (e).

3. Treaties between the States of North and South America.
   Central America with the United States, 1825.
   Columbia with the United States, 1824.
   Honduras with the United States, 1864.
   Peru with Bolivia, 1864.
   Chili with Ecuador, 1855.

4. Treaties between Christian States and Infidel or Heathen States.
   Morocco with France, 1682, 1767.
      , with Denmark, 1767.
      , with Spain 1799, 1861.
      , with the United States of North America, 1786, 1830.
      , with Great Britain, 1826.
      , with the Netherlands, 1683, 1752.
   The Ottoman Porte with France, 1535, 1569, 1584.
      , with the Two Sicilies, 1740.
      , with Spain, 1782.
      , with the United States of North America.

(e) There seems also to be a treaty between Great Britain and Chili.
INTERNATIONAL LAW.

The Ottoman Porte with Great Britain, 1675.
Tunis with Denmark, 1751.
,, with Spain, 1794.
,, with the United States of North America, 1797.
Tripoli with the Two Sicilies, 1754, 1816.
,, with Spain, 1784.
,, with the United States of North America, 1805.
,, with Great Britain, 1662, 1675, 1694, 1716, 1754.
Persia with France, 1708, 1715, 1808.
,, with the Zollverein, 1857.
,, with Greece, 1861.
China with Great Britain, 1843.
,, with France, 1858.
,, with Russia, 1858.
,, with Prussia, 1861.
,, with Portugal, 1862.
Japan with France, 1858.
,, with Russia, 1855.
,, with Switzerland, 1864.
Madagascar with France, 1862.
Siam with Prussia, 1862.
,, with England, 1855 (f).
,, with France, 1856.
,, with Denmark, 1858.
,, with the United States, 1856.

5. Treaties between Christian States other than those in Europe and America.
Hawaii with France, 1857.
,, with Belgium, 1862.
,, with the United States, 1864.
Liberia with the United States, 1862 (g).

(f) By Article 2 of this treaty exclusive jurisdiction is given to the Consul over British subjects. Nearly to the same effect are the treaties with France, Denmark, and the United States.

(g) The United States have been more liberal than England in their treaties about foreign Consuls. Mr. Dana observes that, "In some treaties
CCLVI. From these treaties the general usage of nations with respect to the condition and authority of Consuls, both in Christian and Infidel countries, may be collected. It may be useful to mention further that those treaties which most fully illustrate the usual and ordinary status of Consuls, as distinguished from their extraordinary privileges in Turkey and the Levant, are the following, viz.: The Treaty between Sicily and the Netherlands in 1753, and more particularly the 31st article (h).

The "Convention entre la Cour d'Espagne et celle de France, pour mieux régler les fonctions des Consuls et Vice-Consuls de ces deux Couronnes dans leurs Ports et Domaines respectifs" of 1769 (i).

The Consular Convention between the United States of North America and France, in 1788.

The Treaty between France and the Republic of Texas, in 1839 (k).

Consuls are permitted to arrest deserters from public or private ships through the local magistrates; and in such cases the local processes for arrest, and places of detention for imprisonment, are placed at the disposal of the Consul.

"There are no treaty stipulations between the United States and Great Britain respecting the arrest and detention of deserting seamen.

"The last attempt at such an arrangement failed because of Great Britain's desire to exclude slaves from the treaty, which was objected to by the United States."—Dana, note to Wheaton, p. 178. See also Abbott's United States Manual, 1868.

(h) Wenck. ii. 774, 775.

(i) By the 12th Article of this Treaty it is provided, "Tous les différends et procès entre les sujets de l'une des parties contractantes sur le territoire de l'autre, et notamment tout ce qui concerne les gens de mer, seront jugés par les Consuls respectifs, sans qu'aucun officier territorial puisse intervenir, et que les appels des jugements consulaires seront portés devant les tribunaux du pays qui a institué les Consuls, lesquels tribunaux pourront seuls en connaître."


"Art. 9. Les Consuls, Vice-Consuls, et agens consulaires respectifs, ainsi que leurs chanceliers, jouiront, dans les deux pays, des privilèges généralement attribués à leurs charges, tels que l'exemption des logemens militaires, et celle de toutes les contributions directes, tant personnelles
que mobilières ou somptuaires, à moins, toutefois, qu'ils ne soient citoyens du pays, ou qu'ils ne deviennent, soit propriétaires, soit possesseurs de biens immeubles, ou, enfin, qu'ils ne fassent le commerce, dans lesquels cas ils seront soumis aux mêmes taxes, charges et impositions que les autres particuliers. Ces agens jouiront en outre de tous les autres privilèges, exemptions et immunités qui pourront être accordés, dans leurs résidences, aux agents du même rang de la nation la plus favorisée.

10. Les archives, et en général tous les papiers des chancelleries des consulats respectifs, seront inviolables, et sous aucun prétexte, ni dans aucun cas, ils ne pourront être saisis ni visités par l'autorité locale.

11. Les Consuls, Vice-Consuls, et agens consulaires respectifs, auront le droit, au décès de leurs nationaux morts, sans avoir testé ni désigné d'exécuteurs testamentaires, de remplir, soit d'office, soit à la réquisition des parties intéressées, en ayant soin de prévenir d'avance l'autorité locale compétente, les formalités nécessaires, dans l'intérêt des héritiers, de prendre en leur nom possession de la succession, de la liquider et administrer, soit personnellement, soit par des délégués nommés sous leur responsabilité.

12. Les Consuls, Vice-Consuls, et agens consulaires respectifs seront exclusivement chargés de la police interne des navires de commerce de leur nation, et les autorités locales ne pourront y intervenir qu'autant que les désordres survenus seraient de nature à troubler la tranquillité publique, soit à terre, soit à bord d'autres bâtiments.

13. Les Consuls, Vice-Consuls, et agens consulaires respectifs pourront faire arrêter et renvoyer, soit à bord, soit dans leurs pays, les matelots qui auraient déserté des bâtiments de guerre ou de commerce appartenant à leur nation. A cet effet ils s'adresseront par écrit aux autorités locales compétentes, et justifieront, par l'exhibition des registres du bâtiment ou du rôle d'équipage, ou, si ledit navire était parti, par copie desdites pièces, dûment certifiées par eux, que les hommes qu'ils réclament faisaient partie dudit équipage. Sur cette demande, ainsi justifiée, la remise ne pourra leur être refusée. Il leur sera de plus donné toute aide et assistance pour la recherche, saisie et arrestation desdits déserteurs, qui seront même détenus et gardés dans les prisons du pays, à la requête et aux frais des Consuls, jusqu'à ce que ces agens aient trouvé une occasion de les faire partir. Si pourtant cette occasion ne se présentait pas dans un délai de quatre mois, à compter du jour de l'arrestation, les déserteurs seraient mis en liberté, et ne pourraient plus être arrêtés pour la même cause."
CHAPTER III.

CONSULS—DUTIES AND POWERS OF.

CCLVII. IT will not be inconsistent with the scheme of this work to call attention to some of the principal domestic regulations of particular States upon the duties and powers of Consuls. The law of the United States of America upon a subject in which they have so deep and legitimate an interest, is thus stated by Mr. Chancellor Kent:—

"The Laws of the United States, on the subject of Consuls and Vice-Consuls, specially authorise them to receive the protests of masters and others relating to American commerce, and they declare that Consular Certificates, under seal, shall receive faith and credit in the Courts of the United States. It is likewise made their duty, where the laws of the country permit, to administer on the personal estates of American citizens dying within their consulates, and leaving no legal representative, and to take charge of and secure the effects of stranded American vessels, in the absence of the master, owner, or consignee; and they are bound to provide for destitute seamen within their consulates, and to send them, at the public expense, to the United States. It is made the duty of American Consuls and Commercial Agents to reclaim deserters, and discountenance insubordination, and to lend their aid to the local authorities for that purpose, and to discharge seamen cruelly treated. It is also made the duty of masters of American vessels, on arrival at a foreign port, to deposit their registers, sea-letters, and passports with the Consul, Vice-Consul, or Commercial Agent, if any, at the port; though this injunction only applies when the vessel shall have come to an entry, or transacted business at the port."
These particular powers and duties are similar to those prescribed to British Consuls, and to Consuls under the consular convention between the United States and France, in 1788; and they are in accordance with the usages of nations, and are not to be construed to the exclusion of others resulting from the nature of the consular appointment. The consular convention between France and this country, in 1778, allowed Consuls to exercise police over all vessels of their respective nation, 'within the interior of the vessels,' and to exercise a species of civil jurisdiction, by determining disputes concerning wages, and between the masters and crews of vessels belonging to their own country. The jurisdiction claimed under the consular convention with France was merely voluntary, and altogether exclusive of any coercive authority; and we have no treaty at present which concedes even such consular functions. The doctrine of our courts is, that a foreign Consul, duly recognised by our Government, may assert and defend, as a competent party, the rights of property of the individuals of his nation, in the courts of the United States, and may institute suits for that purpose, without any special authority from the party for whose benefit he acts. But the Court, in that case, said that they could not go so far as to recognise a right in a Vice-Consul to receive actual restitution of the property, or its proceeds, without showing some specific power for the purpose from the party in interest" (a).

CCLVIII. The authority and powers entrusted by the British Government to their Consuls are to be found:—

1. In certain general instructions issued in 1846 by the Secretary of State for the Foreign Department. Of these the following only require to be noticed in this work:—

"Sec. 1. Exequatur.—Upon the arrival of the Consul at his post, he will announce himself to the principal public authorities, and will show them Her Majesty's Commission

(a) Kent's Commentaries, vol. i. pp. 42, 43.
or a copy thereof; and he may, if required, give them a copy, stamped with the consular seal.

The original Commission should be forwarded to Her Majesty's Ambassador or Minister at the Court of the country in which the Consul has to reside, with a request that the said Ambassador or Minister will apply to the proper authorities for the usual exequatur to enable him to enter officially upon his consular duties.

Sec. 2. Privileges.—Her Majesty's Commission and the exequatur will secure to the Consul the enjoyment of such privileges, immunities, and exemptions as have been enjoyed generally by his predecessors, and as are usually granted to Consuls in the country in which he resides; and he will be cautious not to aiming at more.

Sec. 7.—Advice and assistance to be given to British subjects.—The Consul will give his best advice and assistance, when called upon, to Her Majesty's trading subjects, quieting their differences, promoting peace, harmony, and good-will among them; and conciliating, as much as possible, the subjects of the two countries upon all points of difference which may fall under his cognizance.

In the event of any attempts being made to injure British subjects, either in their persons or property, he will uphold their rightful interests, and the privileges secured them by treaty, by due representation in the proper official quarter. He will, at the same time, be careful to conduct himself with mildness and moderation in all his transactions with the public authorities; and he will not, upon any account, urge claims on behalf of Her Majesty's subjects to which they are not justly and fairly entitled. If redress cannot be obtained from the local administration, or if the matter of complaint be not within their jurisdiction, the Consul will apply to Her Majesty's Consul-General, or to Her Majesty's Minister, if there be no Consul-General in the country wherein he resides, in order that he may make a representation to the higher authorities, or take such other steps in the case as he may
think proper; and the Consul will pay strict attention to the instructions which he may receive from the Minister or Consul-General."

"Sec. 10. Protection on board of British ships.—Misconception having arisen with respect to the degree of protection which commanders of British ships may afford to any individuals seeking refuge on board of those ships, the Consul is informed that the commanders of British ships lying in the ports of a foreign country are not authorised to harbour any persons (even if British subjects) who may seek refuge on board of their vessels, in order to evade or resist the due execution of the laws, to which, by reason of their residence in the country, they have rendered themselves amenable; and the Consul will bear in mind, in all applications which may be made to him on behalf of individuals so circumstanced, that such persons are liable to be taken by due process of the laws of the country."

"Sec. 16. Certificates.—The Consul will be careful not to grant a certificate of any fact of which he has not accurately ascertained the truth; and whenever he is required to attest or certify a document consisting of more than one sheet, he will unite the sheets by a tape or ribbon to the end of the document, by means of wax or wafer, on which he will place his official seal."

"Sec. 24. Precedence between Consuls and Naval Officers. In order to avoid the inconvenience which has arisen to Her Majesty's service from a difference of opinion on a point of etiquette between Her Majesty's Consuls and the Commanders of Her Majesty's ships of war arriving at foreign ports with respect to the payment of the first visit, it has been decided that whenever the captain of one of Her Majesty's ships of war, being a post-captain or a commodore, wearing a blue pendant, shall signify to the Consul, in writing, his arrival at the port at which the Consul resides, the Consul (or Vice-Consul in ports where there is a Consul-General) will take the earliest
opportunity of waiting in person on the commander of the ship, and of affording him such assistance as he may require. Commanders of Her Majesty's navy will, on their arrival at any such ports, wait upon Her Majesty's Consuls, but they will be waited upon by Vice-Consuls. Consuls-General and Consuls will, in all cases, wait upon flag-officers and commanders wearing a red or white pendant, without waiting for any previous communication. The officers commanding Her Majesty's ships of war have orders to furnish a boat to convey the Consul on board, and to reland him, on the Consul notifying his wish to have a boat so sent for him. The Consul will strictly attend to the foregoing instructions. The copy of a memorandum upon this subject, issued by the Admiralty to Her Majesty's naval officers, is herewith enclosed."

"Sec. 27. Vice-Consuls.—In case it shall appear to the Consul necessary that a Vice-Consul should be stationed at any port within his district, where no British vice-consulate has heretofore existed, or wherever a vacancy shall occur, he will report the fact to the Secretary of State, showing at the same time how far British interests require such an appointment; and if suggested as expedient, he will submit the name of some English merchant of respectability for the appointment, with the grounds of his recommendation; but he will in no case give him any commission or sanction to act in that capacity until the approval of the Secretary of State shall have been given. Upon the receipt of such approval, the Consul will acquaint the individual with his appointment as Vice-Consul, and will furnish him with the necessary authority to act in that capacity, together with instructions for the guidance of his conduct conformable to those under which he himself is acting."

The Consul is ordered not to dismiss any Vice-Consul acting within his district without the sanction of the Secretary of State; but if he should be of opinion that good and sufficient grounds exist for the dismissal of a Vice-Consul,
he will give information thereof to Her Majesty's Secretary of State, suspending, provisionally, the Vice-Consul only when the extraordinary nature of the case may appear to require so prompt a proceeding; and awaiting, in all cases, the decision of the Secretary of State, previously to taking ulterior proceedings upon the subject.

At the close of every year, it is the duty of the Consul to transmit to the Secretary of State a list (according to a prescribed form \((b)\) ) of all persons who may be acting within his consular district, and under his jurisdiction, either as British Vice-Consuls, Deputy Consuls, Provisional Consular Agents, or in any other similar capacity; stating in such return the station, the name of the individual, his consular rank, the date of his provisional nomination, and the date of the approval thereof by the Secretary of State.

"SEC. 29. Passports.—The Consul will not take upon himself, as a matter of course, to grant passports. If, however, the regulations of the country wherein he resides require that his visa should be affixed to the passport of British subjects, or that a certificate should be furnished by him, to enable them to obtain passports from the proper authorities, he will, when called upon, affix such visa, or "give such certificates" \((c)\).

An Order in Council regulating the consular fees issued in 1851.

CCLIX. The authority and powers of British Consuls are also to be found in the statutes, 6 George IV. cap. 87, \((d)\) 18 & 19 Vict. cap. 42; and also in the statute passed in the sixth year of George IV. (cap. 78) relating to the performance of quarantine.

\((b)\) Which is annexed to the statute.

\((c)\) Fynn's British Consuls' Handbook, pp. 30-55.

\((d)\) "To regulate the Payment of Salaries and Allowances to British Consuls at Foreign Ports, and the Disbursements at such Ports for certain public purposes."

In this statute the clauses which extend from the tenth to the fifteenth relate to provisions for the support of churches and chapels in
In the statute of the 12th and 13th of Victoria, cap. 68, great powers are given to Consuls for the purpose of facilitating the marriages of British subjects resident in foreign countries.

The statute of the 7th and 8th Victoria, cap. 112 (e), commonly called "The Merchant Seamen's Act," contained various provisions relating to Consuls and Vice-Consuls. This statute did not apply to any ship registered in or belonging to any British colony having a legislative assembly, or the crew of any such ship while it was within the precincts of the colony; but it did apply to every ship belonging to any colony or possession of the British Crown, when proceeding from one part of the United Kingdom to another (including the islands of Jersey, Guernsey, Alderney, Sark, and Man), or from any port in the United Kingdom to any port of any foreign Power, or to any colony to which the ship did not belong.

This statute has been repealed (f) and its place taken by one passed in 1854 (the 17th and 18th Vict. cap. 104), called the "Merchant Shipping Act," which, with its amending Acts (18 and 19 Vict. cap. 91; 25 and 26 Vict. cap. 98), is in fact a code of British mercantile and marine law; it embodies and extends the provisions of the former statute, and contains a variety of important provisions with respect to the powers and duties of British Consuls over the commercial marine of Great Britain. The sections which principally relate to this subject are mentioned in the note appended to these observations (g).

CCLIX (a). The following Instructions to Consuls, prepared by the Board of Trade under the Merchant Shipping

---

foreign ports and places where a chaplain is appointed and maintained by subscription.

(a) Sec. 61.

(f) By 17 and 18 Vict. c. 120.

(g) Ss. 13, 31, 46, 52, 53, 54, 80, 81, 83, 103, 104, 105, 158, 192 to 211, inclusive; 219, 220, 221, 227, 230, 246, 257 to 267, inclusive; 276, 483 to 494, inclusive; 18 and 19 Vict. c. 91, s. 19.
Act, 1854, are selected as proper for insertion in this place:—

**British Ships.**

*Ownership.*

"Sec. 4.—The recent changes in the laws relating to navigation have removed many of the conditions formerly requisite to entitle a ship to carry the British flag and to claim British privileges and protection. A ship may now be a British ship, and yet have been built at a foreign port, and be manned and commanded by foreigners. The sole requisite which remains is, that she be owned by persons who owe allegiance to the British Crown, and are subject to British law. These persons are defined to be:—

"(a) Natural-born subjects, who have not sworn allegiance to any foreign State, or who, having done so, have subsequently sworn allegiance to Her Majesty.

"(b) Persons who have been made denizens or naturalised, and have subsequently sworn allegiance to Her Majesty.

"(c) Bodies corporate, subject to the laws of, and having their principal place of business in, some part of Her Majesty's dominions.

"And with respect to natural-born subjects who have sworn allegiance to any foreign State, and to persons who have been made denizens or naturalised, it is required, as a further condition, that they shall either be resident in the British dominions, or members of a British factory, or partners in a house actually carrying on business in the British dominions."

*Simulation or Concealment of National Character.*

"Sec. 19.—It is, as already noticed, of the utmost importance that the single remaining condition requisite to give to a ship the character and privileges of a British ship should be strictly performed; and it is also very important
that the national character of a ship should neither be falsely assumed nor unduly concealed; so that, on the one hand, Her Majesty's Government may not be involved in any difficulties from claims to protection on the part of persons not entitled to use the British flag, and so that, on the other, British ships may not, by concealing their national character, attempt to avoid obligations under which they are placed by British law. With the view of preventing these evils, the following offences are made punishable by forfeiture, that is to say:

"(a) Using the British flag and assuming the British character on board any ship owned, or partly owned, by persons not duly qualified, for the purpose of making the ship appear to be a British ship, unless the assumption is made either for the purpose of escaping capture by an enemy, or by a foreign ship of war in exercise of some belligerent right;

"(b) Carrying or permitting to be carried on board a British ship any papers or documents, or doing or permitting anything to be done with respect to such ship, with intention to assume a foreign character, or to conceal the British character of the ship from any person entitled by law to inquire into the same;

"(c) The acquisition as an owner by an unqualified person of any interest in a ship assuming to be a British ship, except in certain cases of descent and transmission, for which special provision is made in the Act;

"(d) Wilfully making a false declaration concerning the qualification for ownership.

In order to enforce forfeitures in the above cases, Consuls and other public officers are enabled to seize and detain ships, and take them for adjudication before Courts of Admiralty, and they are exempted from any responsibility on account of the detention if reasonable grounds exist for the same. The Consul will, however, act in this case as in the case of a Certificate of Registry improperly used (see paragraph 14), and will not seize the ships unless he has reason to believe
that the offence is wilful and fraudulent, or that it is intended thereby to obtain means of committing piracy, or of avoiding lawful capture by the cruisers of Her Majesty or of Her Allies in time of war, or of defrauding the revenue, or of doing any other act manifestly contrary to public policy. He will, however, in every case warn the parties of their liabilities, and will point out that, in addition to the forfeiture, any person guilty of the offences secondly and fourthly above specified is liable to be prosecuted for a misdemeanour, and he will also report every such offence to the Commissioners of Customs in London.

"Sec. 20.—A ship is not entitled to the privileges of a British ship unless duly registered, as above-mentioned, (paragraph 6); but in order to prevent British owners from attempting to evade British law by not registering their ships, it is provided that, so far as regards payment of dues, liabilities to payments and penalties, and the punishment of persons for offences committed on board such ships by persons belonging to them, ships belonging to persons qualified to own British ships are to be considered British ships, although not registered.

"Sec. 21.—In dealing with cases arising under the above-mentioned enactments, Consuls will remember that, according to well-established principles of International Law, the owner of any ship using a national flag, and assuming a national character, cannot, upon any trial or judicial proceeding, be allowed to urge to his own advantage, or in his own defence, that the flag and character so assumed are not the flag and character which properly belong to the ship."

**Discipline.**

"Sec. 100.—The Consul's duties under this head are extremely important; but, as the mode in which he must act must depend, in a great measure, upon the country in which he is, and the position and powers there given to him, it is impossible to lay down general rules which will meet every case, and
he must be guided by his own discretion, and by such particular instructions as may be given him from time to time. Sec. 243 contains a list of the principal offences committed on board ships, and their respective punishments; but throughout the whole of the 3rd part of the Act will be found provisions bearing more or less on the subject of discipline, and upon the various questions which arise between a master and his crew.

"In grave cases, however, which the Consul feels involve great responsibility, he will do well, when practicable, to avail himself of the assistance of a Naval Court in the mode pointed out below." (Paragraphs 109 to 123.)

Desertion.

"Sec. 101. In cases of desertion, where the foreign authorities are required by treaty to give assistance, or where without such treaty they are willing to do so, the Consul will, if desired so to do by the master, and if satisfied of the justice of the case, apply to the local authorities to have the deserter arrested and placed on board; any expenses, however, attending this proceeding must in all cases be paid by the master."

Interference of Foreign Courts of Justice.

"Sec. 103. In considering how far the interference of foreign courts should be allowed or invoked, the first question to be looked at is whether there are any treaties on the subject existing between this country and the country in which the Consul is acting. To the express stipulations of such treaties, all general rules of International law are subject; and the Consul will therefore be guided by them in the exercise of his own functions, and will call upon the local authorities to act in accordance therewith.

"Sec. 104. Subject to any such treaties as aforesaid, the Consul will remember that every country has the right of
enforcing its own criminal law and police regulations in its own ports and harbours, and that if any offence against such laws or regulations is committed in such ports or harbours, on board a British ship, the offender is liable to be dealt with accordingly. In such cases the Consul's duty will be confined to seeing that the offender is fairly tried, and that justice is properly administered. If the laws or regulations of the place are in fault, it will be a matter for representation to the British Minister in the country, or to Her Majesty's Secretary of State.

"Sec. 105. In cases where the offence is one which is punishable both by the law of the place, as above-mentioned, and also by British law, as mentioned in paragraph 125, and where the local authorities are willing to interfere if required by the Consul to do so, but not otherwise, he will consider whether the ends of justice will be best met by calling for such interference, or by sending the offender to trial in some British court of justice. The questions he will have to consider are,—which is the speediest and most certain mode of obtaining justice,—which course is the best for the convenience of the ship and the witnesses,—and, above all, whether the principles and practice of the foreign court can be relied on, and whether its proceedings and modes of punishment are such as would be considered proper and humane in this country.

"Sec. 106. In any case in which, from whatever cause, any British seaman is committed to prison or otherwise punished in any foreign country, the Consul will see that the place of confinement and mode of treatment is such as would, in this country, be considered proper and humane; if it is not, he will report the case to the British Minister in the country, or to Her Majesty's Secretary of State.

"Sec. 107. Subject to the exceptions mentioned above, the Consul will remember that, according to well-established rules of national law, a British ship carries British law with her, and that all offences committed on board such ship on the high seas, and all mere breaches of discipline in foreign
ports, as well as all matters arising out of the contract with the crew, are to be judged of by British law. In some foreign countries the local courts of justice will take notice of, and adjudicate upon, such contracts; but in these cases it is usual for such foreign courts to act, in the case of a British ship, not according to their own law, but according to British law, so far as the construction of the contract is concerned. Except in cases where the Consul cannot settle the matter otherwise, it is extremely undesirable that disputes between the masters and crews of British ships should be taken into foreign courts; but, whenever this is done, the principles above mentioned should be adhered to. The Consul should explain the British law; and if this is not followed, he should report the case to the British Minister or Her Majesty's Secretary of State.

"Sec. 108. In cases where British seamen are employed in foreign ships, the Consul will remember that, in accordance with the principles above mentioned, they are, whilst so employed, subject to the law of the country to which the ship belongs, and not to British law. If, therefore, the Consul is called upon to interfere in their behalf, he should, either in applying to the local authorities, or in taking any other steps that may be necessary, endeavour to obtain the assistance of the Consul of the country to which the ship belongs."

CCLX. The most instructive and remarkable of the regulations respecting Consuls, promulgated by foreign Powers for the direction of their own subjects, appear to be the following (h):—Those put forth by Spain in 1745, 1817, 1818, 1827; by France (i), "Ordonnances"

(h) De Martens, Rec. de Tr. vol. xxiv. pp. 331, 332, recommends them as "les plus indispensables à connaître ou à consulter."

(i) In the Code de Commerce are these provisions:—
"234. Si, pendant le cours du voyage, il y a nécessité de radoub, ou d'achat de victuailles, le capitaine, après l'avoir constaté par un procès-verbal signé des principaux de l'équipage, pourra, en se faisant autoriser en France par le tribunal de commerce, ou, à défaut, par le juge de paix,
respecting Consuls in Christian countries, published in 1833, 1845; respecting Consuls in Barbary and the "échelles du Levant," those published in 1836. Those put forth by Sardinia in 1835; by Prussia (k) in 1796, and in the years immediately following, and in the Constitution adopted by the Reichstag for the Confederation of the North of Germany, promulgated June 14, 1867 (l); by Brazil in 1834; by Denmark in 1824; by Russia in 1820; by Greece in 1834 (m); but especially those promulgated by the United States of North America in 1870.

chez l'étranger par le consul français, ou, à défaut, par le magistrat des lieux, emprunter sur le corps et quille du vaisseau, mettre en gage ou vendre, des marchandises jusqu'à concurrence de la somme que les besoins constatés exigent.

"Les propriétaires, ou le capitaine qui les représente, tiendront compte des marchandises vendues, d'après le cours des marchandises de même nature et qualité dans le lieu de la décharge du navire, à l'époque de son arrivée.

"244. Si le capitaine aborde dans un port étranger, il est tenu de se présenter au consul de France, de lui faire un rapport et de prendre un certificat constatant l'époque de son arrivée et de son départ, l'état et la nature de son chargement."—L. ii. t. iv.

(k) See Manuel pratique des Consulats, by De Mensch.

Art. 56. "Tout ce qui concerne les consulats de l'Allemagne du nord est placé sous la surveillance du presidium fédéral, qui nomme les "consuls après avoir entendu le comité du conseil fédéral pour le commerce et l'industrie. Il ne pourra être institué de nouveaux consulats "des pays particuliers dans le ressort des consuls fédéraux. Les consuls "fédéraux exerceront les fonctions des consuls des pays particuliers non "représentés dans leur ressort. Tous les consulats existants des états "particuliers seront supprimés aussitôt que l'organisation des consulats "fédéraux sera achevée de telle manière que le conseil fédéral aura "reconnu que la défense des intérêts particuliers et de tous les états "fédéraux est assurée par les consuls fédéraux."

(m) See these translated into French, in a note to p. 245 of De Martens, Le Guide diplomatique, t. i.

It was held by Abbott, C.J., at Nisi Prius, that a foreign Consul, receiving a salary from his own Government, cannot maintain an action for the trouble and labour he has been put to in transacting business for merchants here in which he acted as the officer of his own Government, and in conformity to their express instructions.—De Lema v. Haldimand, 1 Ryan & Moody's Rep. p. 45.
CCLX (a). Consular Regulations of the United States (n).—The following seem proper to be inserted in this place:—

Consuls.

"9. Consuls are of two classes: 1st. Those who are not allowed to engage in business, and whose salaries exceed $1,000 per annum; 2nd. Those who are allowed to engage in business. The former class is known as those embraced in Schedule B. The occupations in which they may not engage are the same with those forbidden to Consuls-General. The latter class of Consuls is again subdivided into—1st. Those who are salaried (known as Consuls in Schedule C); and 2nd. Those who are compensated from the fees which they take."

Vice-Consuls.

"10. Vice-Consuls are defined by the statute to be ‘Consular Officers who shall be substituted temporarily to fill the place of Consuls when they shall be temporarily absent or relieved from duty.’ It follows that when the Consul is present at his post the Vice-Consul has no functions or powers. (The same remarks apply, mutatis mutandis, to Vice-Consuls-General, and Vice-Commercial Agents.)"

Deputy Consuls and Consular Agents.

"11. Deputy-Consuls are defined by the same statute to be Consular Officers, subordinate to their principals, exercising the powers and performing the duties within the limits of their Consulates at the same ports or places at which such principals are located. Consular Agents are defined by the

(n) Regulations published for the use of the Consular Service by the United States: Washington, 1870. The Author is indebted to the courtesy of Mr. Secretary Fish for a copy of this work.
same statute to be Consular Officers, subordinate to their principals, exercising their powers, and performing their duties within the limits of the Consulate at ports or places different from those at which such principals are located. Limits of Consular Districts and of Agencies will remain as heretofore established in the different Consulates."

**Commercial Agents.**

"12. Commercial Agents are full, principal, and permanent Consular Officers, as distinguished from subordinates or substitutes. These officers are peculiar to the service of the United States, and are not regarded by other Powers as entitled to the rank or privileges of Consuls. They are appointed by the President, and may enter upon the duties of their office without an *exequatur.*"

**Limitation of Powers of Subordinate Consular Officers.**

"13. The functions of Vice-Consuls-General, Vice-Consuls, Deputy Consuls-General, Deputy Consuls, Vice-Commercial Agents, and Consular Agents will respectively cease and determine at the expiration of ninety days from the day upon which the successor to the Consular Officer under whom they were respectively appointed enters upon the duties of his office, except as follows: If the new Consular Officer shall, within the said term of ninety days, renominate the old incumbent, such renomination shall operate to continue the term of the office, without further commission or certificate until the pleasure of the Department can be known; or if the said Consular Officer shall, within the said term of ninety days, nominate another person in his place, such nomination shall operate to relieve the incumbent from office."
UNITED STATES' CONSULAR REGULATIONS. 295

Article II.

How Consular Officers are appointed and qualified.

"17. Consuls-General and Consuls are appointed by the President, by and with the advice and consent of the Senate. They qualify by taking the prescribed oath (a copy of which is furnished by the department for the purpose), and by executing a bond to the United States in the form prescribed by the department. For form of oath see Form 1; and for forms of bonds see Forms 2, 3 and 4."

Article III.

When entitled to enter on the discharge of their duties.

"20. On the appointment of a Consul-General or of a Consul, no commission is issued until the bond and oath required by law and regulation have been filed. The Consul is supposed to make early personal application to the department for the forms of such oath and bond; and it is assumed that the laws and regulations in that respect are complied with before these instructions are issued. After the commission is signed and sealed, it is transmitted by the Department of State to the diplomatic representative accredited to the Government within whose jurisdiction the office is situated, with instructions to obtain an exequatur. This document, when obtained, the diplomatic representative usually transmits by post, with the commission, to the Consular Officer. The Consular Officer may, however, proceed to his post and enter upon the discharge of the duties of his office on obtaining the permission of the proper authorities to act until the exequatur arrives. It is customary, also, to transmit, for similar recognition and authority, the warrants of Vice-Consuls and Deputy Consuls."
Article IV.

The privileges of Consular Officers under the Law of Nations.

"21. In the absence of International agreement Consuls as such have no representative or diplomatic character—have no right of exterritoriality, and cannot claim, either for themselves, their families, houses, or property, the privileges of exemption which are accorded to diplomatic agents.

"22. They are, however, after the granting of an exequatur, officers of a foreign State, and under the special protection of the Law of Nations. They may raise the flag and place the arms of the United States over their gates and doors. The actual papers and archives of the Consulate are exempt from seizure and detention. If they are citizens of the United States, and do not hold real estate or engage in business in the country to which they are sent, they will be exempt from the performance of such personal duties toward the local Government as may interfere with the performance of their consular duties."

"23. A Consul should claim to enjoy all the rights and privileges which have been allowed to his predecessors, unless a formal notice has been given that they will no longer be extended to his office or to Consuls of other States in the country in which he resides. He should also claim to enjoy all the immunities which are allowed to Consuls of other countries, unless such other Consuls are entitled to such extraordinary immunities by special treaty stipulations."

Article V.

The Privileges and Powers of Consular Officers of the United States under Treaties and Conventions with Foreign Powers.

"24. The Consuls must bear in mind that, in the following abstract, it is impossible to do more than allude in a general way to the rights and privileges secured by treaties.
The several treaties and conventions alluded to may be found in Appendix No. 1, and in each case the Consul must look there for more detailed information. It is also possible that more extended rights may have been granted to Consuls of other nations, and that the officers of the United States may be entitled to claim them under the clause known as 'the most favoured nation clause,' in a treaty with the United States.

"The department must necessarily trust to the discretion of the Consul, on the one hand, not to permit his rights to be invaded without protest, nor, on the other hand, to claim what he cannot maintain.

"If the rights thus secured by treaty are in any case invaded or violated, the Consul will at once complain to the local authorities, to the department, and to his immediate superior. These complaints should set forth in full all the facts showing the invasion or violation."

**Inviolability of the Archives and Papers of the Consulate.**

"25. This is secured by treaties with the Argentine Republic, Bolivia, Belgium, Denmark, Ecuador, Greece, Guatemala, Hayti, Mexico, the Netherlands, Portugal, Salvador, Sweden and Norway, Switzerland, the Dominican Republic, Muscat, and New Granada."

**Inviolability of the Consular Office and Dwelling.**

"26. This is secured by treaties with Belgium, France, Italy, and Muscat; but the dwelling cannot be used as an asylum."

**Exemption from Arrest.**

"27. By conventions with Belgium, France, and Italy the Consul is exempted from arrest, except for crimes. By treaty with Turkey he is entitled to suitable distinction and necessary aid and protection. In Muscat he enjoys the inviolability of a diplomatic officer."
Exemption from Liability to appear as a Witness.

“28. This is secured by conventions with Belgium, France, and Italy. In such case the testimony may be taken in writing at his dwelling. If the Consul claims this privilege, he should offer to give his evidence in the form prescribed by the convention, and should throw no impediment in the way of the proper administration of justice in the country of his official residence.”

Exemption from Taxation.

“29. When a Consul is not a citizen of the country in which the Consulate is situated, and does not own property therein, and is not engaged in business therein, he is secure against the liability to taxation by treaties or conventions with Belgium, Bolivia, Denmark, Ecuador, France, Guatemala, Hayti, Italy, the Netherlands, Salvador, and New Granada” (o).

Exemption from Military Service.

“30. If not citizens of the country of their consular residence or domiciled at the time of the appointment in it, this exemption is secured by conventions with Belgium, Denmark, France, Guatemala, Italy, Mexico, the Netherlands, Salvador, and New Granada. In New Granada the exemption also extends to officers, secretaries, and attachés.”

Infraction of Treaties.

“31. The right in such case to correspond with the local authorities is secured by conventions with Belgium, France, Italy, and New Granada.”

(o) The treaty obligations of New Granada are assumed by its successor the United States of Columbia.
The Right to exhibit the National Arms and Flag:

"32. This is given by conventions with Belgium, France, Italy, the Netherlands, and New Granada."

Depositions.

"33. The right to take depositions is secured by conventions with Belgium, France, Italy, and New Granada."

Jurisdiction over Disputes between Masters, Officers, and Crew.

"34. Exclusive jurisdiction over such disputes in the vessels of the United States, including questions of wages, &c., is conferred by treaties or conventions with Belgium, Denmark, France, Greece, Italy, the Netherlands, Prussia, Portugal, Russia, Sweden and Norway, Dominican Republic, Bremen, Hanover, Mecklenburg-Schwerin, Tripoli, and New Granada."

Right to reclaim Deserters.

"35. The right to reclaim deserters from the vessels of the United States is conferred by treaties or conventions with Bolivia, Belgium, Denmark, Ecuador, France, Greece, Guatemala, Hawaiian Islands, Hayti, Italy, Japan, Mexico, Madagascar, the Netherlands, Prussia, Portugal, Russia, Salvador, Sweden and Norway, Dominican Republic, Siam, Hanover, Mecklenburg-Schwerin, and New Granada."

Salvage.

"36. The right to settle salvage for damages at sea is conferred by conventions with Belgium, France, the Netherlands, Hawaii, Italy, Madagascar, Turkey, and New Granada. The parties may, however, by agreement, deprive the Consul of this jurisdiction."
Estates of Citizens of the United States, deceased.

"37. By treaties with Morocco, Muscat, Nicaragua, Paraguay, Tripoli, China, Japan, Tunis, New Granada, and Persia, Consuls are entitled to the custody of the property of citizens of the United States, dying within the limits of their respective Consulates."

Jurisdiction over Offences and Crimes.

"38. The jurisdiction over crimes and offences committed by citizens of the United States is conferred by treaties with China, Japan, Madagascar, Siam, and Borneo. In Morocco, Muscat, Tripoli, Tunis, and Persia the Consuls are empowered to assist in the trials of citizens of the United States accused of murder or assault."

Civil Jurisdiction.

"39. Jurisdiction over civil disputes is conferred by treaties with China, Japan, Turkey, Madagascar, Siam, Borneo, Morocco, Muscat, Persia, Tripoli, and Tunis. This jurisdiction is exclusive in disputes between citizens of the United States. In Japan it extends to claims of Japanese against Americans. In China and Siam the jurisdiction is joint in controversies between Americans and Chinese or Siamese.

"In Madagascar the exclusive jurisdiction extends to disputes between citizens of the United States and subjects of Madagascar. In Turkey there can be no hearing in a dispute between Turks and Americans unless the dragoman of the Consulate is present."
CHAPTER IV.

DECISIONS OF MUNICIPAL TRIBUNALS AS TO CONSULS.

CCLXI. A Consul, being a person impressed with a public character, is "entitled" (as Lord Ellenborough says) "to privilege to a certain extent, such as for safe-conduct; "and if that be violated, the Sovereign has a right to com- "plain of such violation" (a).

Vattel complains that Wicquefort, in his Treatise on Ambassadors, denies to Consuls the *jus gentium*, while he cites instances which support their claim to it. But these instances, when examined, do not sustain the assertion of Vattel (b).

CCLXII. The Governor of Cadiz having arrested and insulted the Dutch Consul, the United Provinces complained to the Court of Madrid on the ground that the *jus gentium* had been violated, and not on the ground that specific treaties, which was their real vantage-ground, had been disregarded by these acts.

The Dutch also made a fruitless endeavour to obtain the privilege of an ambassador for their Consul at Genoa, but the Senate refused their claim, replying: "Qu'ils ne le re- "connoissoient point pour Ministre public; et que tout ce "qu'on pouvoit désirer d'eux, c'estoit la jouissance paisible "des droits et des privilèges que la coutume attribue à "cette sorte d'emplois. Les Consuls ne sont que des "marchands, qui, avec leur charge de juge des différends


(b) *Wicquefort*, *L' Ambassadeur et ses Fonctions*, l. i. s. v. p. 63.
" qui peuvent naître entre ceux de leur nation, ne laissent pas de faire leur trafic, et d'être sujets à la justice du lieu de leur résidence, tant pour le civil que pour le criminel; ce qui est incompatible avec la qualité de "Ministre public" (c).

In 1634 a quarrel took place between the Republic of Venice and the Papal Government, on account of divers flagrant and indefensible outrages committed by the Governor of Ancona against the property and persons of the Consuls of the Republic, seizing the papers and goods of one, and imprisoning the person of the other, upon suspicions wholly unsupported by proof. The Ambassador of France interfered to mediate between the parties. But these were cases in which the Government of Venice would have resented the injury if one of their private citizens had been the subject of it; and Wicquefort's position with respect to the status of Consuls is, "Les Princes qui les employent les protègent, comme personnes qui sont à leur service et comme tout "bon maistre protège son serviteur et son domestique; mais "non comme Ministres publics" (d).

And it is with the instances cited by Wicquefort before his eyes that Bynkershoek, not disposed, it must be presumed, to lower the dignity of his country, remarks: "Et, si verum amamus, Consules illi non sunt nisi Mercatorum "Nationis suæ defensores et quandoque etiam judices, quin "fere ipsi Mercatores, non missi, ut principem suum repre-"sentent apud alium principem, sed ut principis sui subditos "tucantur in iis, que ad mercaturam pertinent, sœpe et ut "de iis inter eos jus dicant" (e).

CCLXIII. In France the law has been very correctly laid down.

In September, 1842, the Cour royale de Paris confirmed, on appeal, the judgment of the Tribunal civil de la Seine, in

(c) Wicquefort, 1. i. s. v. p. 62.
(d) Ibid. p. 63.
(e) Bynkershoek, Opera, vol. vii. p. 482. De Foro Legatorum, c. x.
The matter of *M. Carlier d'Abaunza, Marquis de la Fuente Hermosa.*

The Marquis was a Spaniard by birth, and had lived in Paris since 1833. In 1840 he had been nominated Consul-General of the Republic of Uruguay; but had not obtained the *exequatur* of the French Government. He was arrested by a creditor, and claimed exemption from civil process on the ground of his diplomatic character. But the French Courts decided that the Consul had no diplomatic mission, and was not entitled to the immunities of an ambassador, under any circumstances, and that this proposition was still more certain when the Consul had not received the *exequatur* of the Government of the country in which he was residing (f).

The Cour royale of Aix, in the year 1843, gave the following decision in the case of M. Soller:

"Attendu que si les Ambassadeurs sont indépendants de l'autorité souveraine du pays dans lequel ils exercent leur ministère, ce privilège n'est pas applicable aux Consuls;

"Que ceux-ci ne sont que des agents commerciaux; que si les lois de police et de sécurité obligent en général tous ceux qui habitent le territoire français, il en résulte que l'étranger, qui se trouve même casuellement sur ce territoire, doit concourir de tous les moyens à faciliter l'exercice de la justice criminelle;

"Attendu que si la convention diplomatique dont le Consul d'Espagne se prévalut pour être dispensé de venir déposer devant la cour était sans inconvénient pour le temps où elle fut faite, alors que la procédure criminelle était secrète, elle est inapplicable aujourd'hui, où, d'après le droit public qui nous régit, les débats sont publics, et où les témoins sont tenus de déposer oralement devant le jury;

"Mais attendu que le Consul est étranger; qu'il a pu

(f) *Gazette des Tribunaux* (numéro 4800), lundi 5 et mardi 6 septembre 1842. *Ib.* (numéro 4783) samedi 6 août 1842.

See also the case of Hermann Delong. *Ib.* (numéro 4800) dimanche, 9 mai 1841.
"ignorer l'économic et le mécanisme de la procédure crimi-
"nelle française, et qu'il y a de la bonne foi dans son refus;
" La cour déclare n'y avoir lieu à condamner M. Soller à
"l'amende " (g).

CCLXIV. The civil tribunals of the United States of
North America have promulgated the same doctrine.

CCLXV. In England the status of Consuls has more
than once been brought under discussion in the Courts which
administer Municipal Law.

In the tenth year of the reign of George II. (1737), the
following case was brought before Lord Chancellor Talbot:—

Barbuit's Case in Chancery (h).

Barbuit had a commission, as Agent of Commerce from
the King of Prussia, to Great Britain, in the year 1717,
which was accepted here by the Lords Justices when the
King was abroad. After the late King's demise, his com-
mission was not renewed until 1735, and then it was, and
allowed in a proper manner; but with a recital of the powers
given him in the commission, and allowing him as such.
These commissions were directed generally to all the persons
whom the same should concern, and not to the King; and
his business described in the commissions was, to do and
execute what his Prussian Majesty should think fit to order
with regard to his subjects trading in Great Britain; to
present letters, memorials, and instruments concerning trade,
to such persons, and at such places, as should be convenient,
and to receive resolutions thereon; and thereby his Prussian
Majesty required all persons to receive writings from his
hands, and give him aid and assistance. Barbuit lived here
near twenty years, and exercised the trade of a tallow-

(g) Heffers, s. 226, note.
De Martens, Le Guide diplomatique, t. i. p. 298.
(h) Cases in Equity under Lord Talbot, p. 281.
chandler, and claimed the privilege of an Ambassador or foreign Minister, to be free from arrests.

After hearing counsel on this point,—

The Lord Chancellor said: "A bill was filed in this Court against the defendant in 1725, upon which he exhibited his cross bill, styling himself merchant. On the hearing of these causes the cross bill was dismissed; and in the other, an account decreed against the defendant. The account being passed before the Master, the defendant took exceptions to the Master's report, which were overruled; and then the defendant was taken upon an attachment for non-payment, &c. And now, ten years after the commencement of the suit, he insists he is a public Minister, and therefore all the proceedings against him null and void. Though this is a very unfavourable case, yet, if the defendant is truly a public Minister, I think he may now insist upon it; for the privilege of a public Minister is to have his person sacred and free from arrests, not on his own account, but on the account of those he represents; and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents, when they cannot meet themselves. And if the foundation of this privilege is for the sake of the Prince by whom an Ambassador is sent, and for the sake of the business he is to do, it is impossible that he can renounce such privilege and protection; for by his being thrown into prison the business must inevitably suffer. Then the question is, whether the defendant is such a person as 7 Anne, cap. 10, describes; which is only declaratory of the ancient universal jus gentium. The words of the statute are, Ambassadors or other public Ministers, and the exception of persons trading relates only to their servants: the Parliament never imagining that the Ministers themselves would trade. I do not think the words Ambassadors or other public Ministers are synonymous. I think that the word Ambassadors, in the Act of Parliament, was intended to signify Ministers sent..."
"upon extraordinary occasions, which are commonly called "Ambassadors Extraordinary; and public Ministers, in the "Act, take in all others who constantly reside here: and "both are entitled to these privileges. The question is, "whether the defendant is within the latter words. It has "been objected that he is not a public Minister, because he "brings no credentials to the King. Now, although it be "true that this is the most common form, yet it would be "carrying it too far to say that these credentials are abso- "lutely necessary; because all nations have not the same "forms of appointment. It has been said, that to make him "a public Minister he must be employed about State affairs. "In which case, if State affairs are used in opposition to "commerce, it is wrong; but if only to signify the business "between nation and nation, the proposition is right; for "trade is a matter of State, and of a public nature, and con- "sequently a proper subject for the employment of an Am- "bassador. In treaties of commerce those employed are as "much public Ministers as any others; and the reason for "their protection holds as strong; and it is of no weight "with me that the defendant was not to concern himself "about other matters of State, as if he was authorised as a "public Minister to transact matters of trade. It is not "necessary that a Minister's commission should be general "to entitle him to protection; but it is enough that he is "to transact any one particular thing in that capacity, as "every Ambassador Extraordinary is; or to remove some "particular difficulties, which might otherwise occasion war. "But what creates my difficulty is, that I do not think he is "entrusted to transact affairs between the two Crowns: the "commission is, to assist his Prussian Majesty's subjects "here in their commerce, and so is the allowance. Now "this gives him no authority to intermeddle with the affairs "of the King, which makes his employment to be in the "nature of a Consul. And although he is called only an "Agent of Commerce, I do not think the name alters the "case. Indeed, there are some circumstances that put him
below a Consul; for he wants the power of judicature which is commonly given to Consuls. Also their commission is usually directed to the Prince of the country, which is not the present case; but at most he is only a Consul.

It is the opinion of Barbeyrac, Wicquefort, and others, that a Consul is not entitled to the *jus gentium* belonging to Ambassadors. And as there is no authority to consider the defendant in any other view than as a Consul, unless I can be satisfied that those acting in that capacity are entitled to the *jus gentium*, I cannot discharge him.”

CCLXVI. In 1764, the case *Triquet and others* v. *Bath* (i) came before the King’s Bench, and the great Lord Mansfield referred to the case of *Barbuit* in which he had been counsel, and said that neither Lord Talbot, nor Lord Holt, nor Lord Hardwicke ever doubted that the Law of Nations was part of the Law of England. This case related to the privileges of a Secretary of a Foreign Ambassador.

In 1767, the case of *Heathfield* v. *Clifton* (k) came before the King’s Bench, in which also the privileges of the Ambassador’s retinue were discussed, and Lord Mansfield said:—

"The privileges of public Ministers and their retinue depend upon the Law of Nations, which is part of the Common Law of England. And the Act of Parliament of 7 Anne, c. 12, did not intend to alter, nor can alter, the Law of Nations. His Lordship recited the history of that Act, and the occasion of it, and referred to the annals of that time. He said, there is not one of the provisions in that Act which is not warranted by the Law of Nations.

"The Law of Nations will be carried as far in England as anywhere, because the Crown can do no particular favours affecting the rights of suitors, in compliment to public ministers, or to satisfy their points of honour.

---

(i) 1 Taunton, 107.  
(k) 4 Burrows, 2016.  

x 2
"The Law of Nations, though it be liberal, yet does not give protection to screen persons who are not bona-fide servants to public Ministers, but only make use of that pretence in order to prevent their being liable to pay their just debts. The Law of Nations does not take in Consuls, or Agents of Commerce, though received as such by the Courts to which they are employed. This was determined in Barbuirs's case, which was solemnly argued before and determined by Lord Talbot, on considering and well weighing Barbeyrac, Bynkershoek, Grotius, Wicquefort, and all the foreign authorities (for there is little said by our own writers on this subject)."

CCLXVII. In 1808, the case of Clarke v. Cretico (l) came before the Common Pleas. The defendant claimed exemption from arrest, on the ground of being Consul-General of the Sublime Porte; and the authority of Vattel was much urged on his behalf, as well as the doctrine laid down by Lord Mansfield in the case just cited, that the Law of Nations was part of the Law of England. In this case of Clarke v. Cretico, Sir James Mansfield, Chief Justice, said: "It has not been clearly proved that the defendant held the office of Consul at the time of the arrest. The general question is undoubtedly of importance; but it is not necessary that the Court should come to any determination upon it at present. The office of Consul is indeed widely different from that of an Ambassador; but still the duties of it cannot be performed by a person in prison. Yet I should have some difficulty in deciding in opposition to Wicquefort, who is an authority of great weight, and without any determination upon the question (for in the case before Lord Talbot there was no decision), that a Consul is entitled to this privilege. The words of the statute are, 'Ambassador or other public Minister.' But a Consul is certainly not a public Minister.

(l) 3 Burrows, 1481.
"Let the case stand over till it shall be ascertained by further evidence whether the appointment of the defendant has been revoked."

Afterwards an affidavit was produced, by which it appeared that the defendant had been dismissed from his office in the month of December, 1806, and the rule was discharged.

CCLXVIII. Lastly in the case of Viveash v. Becker (m), which in 1814 came before the King's Bench, Lord Ellenborough decided that a resident merchant in London, who had been appointed and had acted as Consul to the Duke of Oldenburg, was not privileged from arrest. In this case Lord Ellenborough, having reviewed the preceding cases, and the doctrine of Wicquefort and Vattel, concluded his judgment in these words: "Nobody is disposed to deny that a Consul is entitled to privileges to a certain extent, such as for safe-conduct; and if that be violated, the Sovereign has a right to complain of such violation. This consideration disposes of the authority which was endeavoured to be derived from that case. Then it is expressly laid down that he is not a public Minister, and more than that, that he is not entitled to the jus gentium. And I cannot help thinking that the Act of Parliament, which mentions only 'Ambassadors and public Ministers' and which was passed at a time when it was an object studiously to comprehend all kinds of public Ministers entitled to these privileges, must be considered as declaratory not only of what the Law of Nations is, but of the extent to which that law is to be carried. It appears to me that a different construction would lead to enormous inconveniences, for there is a power of creating vice-consuls; and they too must have similar privileges. Thus a Consul might appoint a vice-consul in every port, to be armed with the same immunities, and be the means of creating an exemption from arrest indirectly which the

(m) 3 Maule & Schwyn, 297.
"Crown could not grant directly. The mischief of this "would be enormous. In this case it does not appear that "the debt was not contracted before the time of the defen-"dant's having the character of Consul. If we saw clearly "that the Law of Nations was in favour of the privilege, it "would be afforded to the defendant; and it would be our "duty rather to extend than to narrow it. But we are of "opinion that no such privilege exists, but that this defen-"dant is, like every other merchant, liable to arrest. Rule "discharged."

CCLXIX. The English court (n) has considered that a Consul resident abroad and plaintiff in a suit, is exempt from the necessity of giving security for costs, to which necessity, by the general principle of International Law, the foreign plaintiff is subject (o).

CCLXX. Such being the doctrine of the municipal courts of Great Britain, it remains to notice the doctrine held by the tribunals of International Law in that country. The case of The Indian Chief came before the Prize Court in 1800. In this case a cargo seized as prize was sought to be exempted from the rights of the belligerent, upon the ground that it was the property of the American Consul at Calcutta. Lord Stowell said: "On the part of the claimant "many grounds have been taken. I am first reminded that "he was American Consul, although it is not distinctly "avowed that his consular character is expected to protect "him; nor could it be with any propriety or effect, it being "a point fully established in these Courts, that the character "of Consul does not protect that of merchant united in the "same person. It was so decided on solemn argument in "the course of the last war by the Lords, in the cases of "Mr. Gildermester, the Portuguese Consul in Holland, and "of Mr. Eykellenburg, Prussian Consul at Flushing. These "cases were again brought forward to notice in the case of

(o) Fayx, l. ii. t. ii. c. 2. Étranger demandeur.
Mr. Fenwick, American Consul at Bordeaux in the beginning of this war, on whose behalf a distinction was set up in favour of American Consuls, as being persons not usually appointed, as the Consuls of other nations are, from among the resident merchants of the foreign country, but specially delegated from America, and sent to Europe on the particular mission, and continuing in Europe principally in a mere consular character. But in that case, as well as in the case of Sylvanus Bourne, American Consul at Amsterdam, where the same distinction was attempted, it was held that if an American Consul did engage in commerce, there was no more reason for giving his mercantile character the benefit of his official character, than existed in the case of any other Consul. The moment he engaged in trade, the pretended ground of any such distinction ceased: the whole of that question, therefore, is as much shut up and concluded as any question of law can be." (p)

CCLXXI. The same doctrine has been promulgated by the Prize Courts in the United States of America (q).

---

The Josephine, 4 Rob. 26.
The President, 5 Rob. 277.
The Falcon, 6 Rob. 197.
The Hope and others, Dodson's Ad. Rep. 226, and note D. at the end of the volume.

Albrecht v. Sussman, 2 Vesey & Beanes' Chancery Reports, 323.

(q) American Reports:—
Arnold v. United Insurance Company, 1 Johnson, 363.
Kent's Comment. vol. i. pp. 44-62.
See note to American edition of Chitty's Vattel, p. 140, s. 101.
CHAPTER V.

CONSULS IN THE LEVANT AND CHINA (a).

CCLXXII. The attributes and functions of the Consul have hitherto been considered with reference to the existence of their office in Christian countries; but by usage, practice, and, still more, by the express stipulations of treaty, they have obtained a very different status in Mahometan and indeed in Unchristian dominions. In these countries they have retained that general character of diplomatic representatives which they appear, from the sketch given at the beginning of this Part, to have in earlier times possessed everywhere, but of which, in Christian countries, they have subsequently been deprived.

CCLXXIII. In almost all the treaties which, of late years, have been entered into by European Powers with Mahometan States, the power of criminal jurisdiction over the subject of the State which the Consul represents, has been stipulated for and conceded to that officer. In fact, Mahometan States have accorded to Europeans a privilege equivalent to that which they would have enjoyed from a concession of territory, viz., the privilege of preserving their natural right, and being subject to their national jurisdiction in a foreign territory (b). Consuls in the "échelles du Levant" receive, on the requisition of their Ambassador at Constantinople, letters-patent from the Porte, called a Barat, specifying their privileges and immunities.

---

(a) Papers laid before Parliament relating to the Jurisdiction of Her Majesty's Consuls in the Levant, 1845.
(b) De Martens, Le Guide dipl. i. 311, n.
CCLXXIV. In England a corporation by the name of "the Governor and Company of Merchants of England trading in the Levant Seas" was created by letters-patent in James I.'s reign. These were confirmed by Charles II., and were the subject of various statutes in the reigns of George II. and George III.; but in the sixth year of George IV. the possessions and property of the company were transferred to Government for the public service (c).

CCLXXV. In August 1843, a very important English statute was passed (6 & 7 Vict. c. 94), which recited that—
"Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty hath power and jurisdiction within divers countries and places out of Her Majesty's dominions: and whereas doubts have arisen how far the exercise of such power and jurisdiction is controlled by and dependent on the laws and customs of this realm, and it is expedient that such doubts should be removed: Be it therefore enacted, &c., That it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath, or may at any time hereafter have, within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory.

2. That every act, matter, and thing which may at any time be done in pursuance of any such power or jurisdiction of Her Majesty, in any country or place out of Her Majesty's dominions, shall, in all courts, ecclesiastical and temporal, and elsewhere within Her Majesty's dominions, be and be deemed and adjudged to be, in all cases, and to all intents and purposes whatsoever, as valid and effectual as though the same had been done according to the local law then in force within such country or place."

CCLXXVI. In consequence of the provisions of this statute, two important Orders in Council were issued

(c) 6 Geo. IV. c. 23.
respecting the civil (d) and criminal (e) jurisdiction of Her Majesty's Consuls in the Levant (f). In the memorandum put forth by the Foreign Office (July 2, 1844) for the guidance of the Consuls in the exercise of their jurisdiction, the grounds upon which it rests, and the general manner in which it should be exercised, are very clearly stated in the following language:—

"The right of British consular officers to exercise any "jurisdiction in Turkey, in matters which in other countries "come exclusively under the control of the local magistracy; "depends originally on the extent to which that right has "been conceded by the Sultans of Turkey to the British "Crown, and therefore the right is strictly limited to the "terms in which the concession is made.

"The right depends, in the next place, on the extent to "which the Queen, in the exercise of the powers vested in "Her Majesty by Act of Parliament, may be pleased to "grant to any of her consular servants authority to exercise "jurisdiction over British subjects, and therefore the Orders "in Council which may, from time to time, be issued, are "the only warrants for the proceedings of the Consuls, and "exhibit the rules to which they must scrupulously adhere. "This state of things in Turkey is an exception to the "system universally observed among Christian nations. "But the Ottoman emperors having waived in favour of "Christian Powers rights inherent in territorial sovereignty, "such Christian Powers, in taking advantage of this conces-

"sion, are bound to provide, as far as possible, against any "injurious effects resulting from it to the territorial sove-

"reign; and as the maintenance of order and the repression "and punishment of crime are objects of the greatest "importance in every civilised community, it is obligatory "upon the Christian Powers, standing as they do in Turkey,

(d) 2nd October, 1843.
(e) 19th June, 1844.
"in so far as their own subjects are concerned, in the place
of the territorial sovereign, to provide as far as possible
for these great ends" (g).

CCLXXVII. Consuls residing in any of the five free ports (Canton, Amoy, Foo-chow-foo, Ningpo, Shanghae) established by the Treaty of Peace between Great Britain and China in 1842, have received by the subsequent commercial Treaty of 1843, powers of a very extended character, requiring, in some respects, the exercise of judicial and executive functions. The thirteenth article of this Treaty contains the following provisions with respect to Consuls:—

"Whenever a British subject has reason to complain of a Chinese, he must first proceed to the Consulate, and state his grievance. The Consul will thereupon inquire into the merits of the case, and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of a British subject, he shall no less listen to his complaint, and endeavour to settle it in a friendly manner. If an English merchant have occasion to address the Chinese authorities, he shall send such address through the Consul, who will see that the language is becoming; and, if otherwise, will direct it to be changed, or will refuse to convey the address. If, unfortunately, any disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of a Chinese officer, that they may together examine into the merits of the case and decide it equitably. Regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them in

(g) Fynn, p. 20.
Annual Register, 1843, p. 370.
Ibid. xxxiv. p. 418; see sections 12, 13, as to Subordinate Consuls and Consuls.
Vide ante, vol. i. pp. 88 sqq., for enumeration of the principal treaties between Christian and Infidel States.
"force; and, regarding the punishment of Chinese criminals, "these will be tried and punished by their own laws, in the "way provided for by the correspondence which took place "at Nankin after the concluding of the Peace" (h).

(h) Annual Register, 1843, p. 371.

The 6 Geo. 4, c. 87, which regulates the payment of salaries and allowances to British Consuls at foreign ports, and the disbursements at such ports for certain public purposes, contains various provisions relating to Churches and Chaplains attached to Consulships; for by this Act the whole management of the funds and the regulation of the expenditure is under the control of the Consul, and not of the Ambassador; and by a strange anomaly, in those foreign Courts where there is an Ambassador and not a Consul (e.g., Berlin, Dresden, &c.), there is no legislative provision for any chaplain at all.

For a recent English code of Consular Regulations in China and Japan, see vol. i. p. 395.
CCLXXVIII. It was stated, in an early part of this work (a), that the International Status of Foreign Spiritual Powers, especially of the Pope, would require a distinct and separate consideration.

It is a subject to which very slight, if any, allusion is to be found in writings of the early International Jurists. Grotius mentions the donation of the Roman territory to the Popes (b), and places among the "unjust causes of war" the papal claim of jurisdiction over all the nations of the earth (c); and under the same head (d), he evidently alludes to the division by Alexander VI. of the newly-discovered world (A.D. 1494), between the Crowns of Portugal and Castille (e) perhaps also to the donation by Pope Julius II. (A.D. 1512) of the kingdom of Navarre to Ferdinand of Arragon, because the lawful monarch (Jean d'Albret) had taken part with Louis XI. of France against the Pope and Ferdinand. Grotius does not specifically mention these instances, but the former, at least, appears to have been present to his mind,

(a) Vol. i. ch. ii.
(b) De J. B. et P., i. 3, 13.
(c) Ibid. i. ii. 22, 14.
(d) Ibid.
(e) See note of Gronovius.
when he speaks of the untenable position of those who assert the *jus Ecclesiae* over nations occupying the hitherto unknown part of the earth. Such pretensions are, he says, contrary to the letter and spirit of Scripture, to the example of our Saviour, from whom all Ecclesiastical power is derived, and to the opinion of the early Fathers of the Church. A bishop is required by St. Paul, among other things, not to be a smiter. To rule by human force belongs, says St. Chrysostom, not to bishops, but to kings. A bishop is to discharge his office *non cogendo sed persuadendo*, and, Grotius concludes, "ex his quidem satis appareat, Episcopos, qua tales sunt, jus regnandi in homines humano more nullum habere; " *Hieronymus Regem et Episcopum comparans: ille volentibus præst, hic nolentibus* (f).

Besides these allusions to this question of International Law, other observations, more or less bearing upon it, may be found in the work *De Jure Belli et Pacis* (g); but the whole subject, in its mixed aspect both of International and Public Law, is dealt with by Grotius in a later work published after his death, and entitled, *De Imperio summarum potestatum circa sacra*. Bynkershoek (h) touches upon the authority of the Canon Law, and the difficulty which, on account of his *double allegiance*, might arise in the case of a delinquent Cardinal Ambassador; and in his *Quaestiones Juris Publici*, he has some chapters on the general subject, in which it is not unimportant, with reference to subsequent observations on this subject, to remark, that he carefully distinguishes between the cases of States which have, and those which have not, an *established Church* (i).

---

(f) *De J. B. et P.* ii. 22, 14.

(g) Grotius refers to the authority of his fellow-countryman, Pope Adrian (Adrianus noster, qui Cisalpinorum ultimus Pontifex Romanus sit), as asserting, with probability, that subjects may consider whether the war of their Government be just or not.—*De J. B. et P.* I. ii. 26, iv. 4.

(h) *De Foro Leg.* xii. 3–4, xxii. 4, xxiii. 4.

(i) "Quia Jus publicum etiam in Sacris consistit, ut admonet Ulpianus in l. i. s. 2, ff. d. Just. et Jur., inde recte efficitur, Sacrorum quoque curam ad eum pertinere, ad quem pertinet summa totius Reipublicae
D'Aguesseau has an elaborate dissertation \((k)\) upon the double allegiance of the Cardinal, which will be considered in a later chapter on this subject. Vattel has a chapter *De la Piété et de la Religion* \((l)\), which is not characterised by much force of reasoning or affluence of historical research, and which is chiefly concerned with considerations appertaining to Public Law. Later writers, especially Klüber, deal more systematically, though still very scantily, with the subject. More is to be found in such writers upon the general question of Religion in its connexion with the State; but these observations seem generally to belong rather to the province of Public than of International Jurisprudence \((m)\). The question of the Right of Intervention on behalf of co-religionists, the subjects of a foreign kingdom, has been considered in the former volume of this work \((n)\).

CCLXXIX. It should be the object of the International Jurist to deal with this difficult subject, not in a theological, but in a strictly legal spirit. The line of demarcation between the two is often, indeed, very finely drawn, and it may not be always possible, especially in the historical narrative which necessarily introduces the law, to avoid trespassing, in some degree, upon what may appear, when regarded from one particular point of view, to be the exclusive domain of theology.

But there is one rule, the observance of which is essential

*potestas.* Scio, de eo argumento integris Libris esse disputatum in utramque partem, alios pro principe, alios pro Ecclesia suffragium dedisse, quin et esse, qui inter Jovem et Cæsarem imperium diviserint, sed quicquid illi dixerunt, dixerunt de *Religione jam constituta*, de *constituenda autem* et verum est, et utile, eum, qui rerum civilium imperio potitur, etiam sacrorum esse potestem."—*Bynkershoek*, Q. J. P. I. ii. c. xviii. et vide cc. xix. xx.

\((k)\) *Vide post.*

\((l)\) L. i. c. xii.

\((m)\) *E.g. De Rayneval, Institut. de Droit de la Nature et des Gens*, c. 27. *De la Religion et du Culte*, De Martens, i. 208.

*Vattel*, i. 316–320.

*Ger. Noodt, Dissert. de Relig. ab Imperio, Jure Gentium, libera.*

*Bynkershoek, De Cultu Religionis Peregrina* apud veteres Romanos

\((n)\) Vol. i. pp. 515–531.
to the judicial discussion of this matter, namely, that an accurate statement of historical fact should precede the attempt to lay down any position or canon of International Law, upon the subject of the relations of Foreign Spiritual Powers with an independent State.

CCLXXX. It is proposed, in the following chapters, to treat of the whole subject in the following order:—

1. General observations as to the right of the State to superintend, within its territorial limits, all religious doctrines taught, and the teachers of them.—The early connexion of the Christian Church with the State.

2. The growth of the exterritorial authority and pretensions of the Pope.

3. The Corpus Juris Canonici, the principles contained therein, and in subsequent Bulls, at variance with International Law.

4. The International Status of the Papacy, between the period of the promulgation of the Canon Law and the Council of Trent.

5. The period of the Council of Trent, and the effect of that Council upon International relations.

The Vatican Council of 1870.

6. The International relations of the Papacy with Foreign States in which a Roman Catholic Church is established, during the period between the Reformation and the present time, especially with the new Kingdom of Italy.—The history of Concordata.

7. The International relations of the Papacy with Foreign States in which a Protestant Church is established.—Bullæ Circumscriptionum.

8. The International relations of the Papacy with Foreign States in which a branch of the Catholic Church, not in communion with Rome, is established; e.g. England, Russia, Greece.

9. The Electors, Ministers, and Courts of the Pope, considered in their relation to Foreign States.

10. The International Status of the Patriarch of Constantinople.
CHAPTER II.

GENERAL OBSERVATIONS AS TO THE RIGHT OF THE STATE TO SUPERINTEND, WITHIN ITS TERRITORIAL LIMITS, ALL RELIGIOUS DOCTRINES TAUGHT, AND THE TEACHERS OF THEM.—THE EARLY CONNEXION OF THE CHRISTIAN CHURCH WITH THE STATE.

CCLXXXI. "Itaque ex tot generibus nullum est "animal præter hominem, quod habeat notitiam aliquam "Dei: ipsisque in hominibus nulla gens est, neque tam "immanueta neque tam fera, quæ non etiamsi ignoret "qualem habere Deum deceat, tamen habendum sciat," Such is the language of Cicero (a).

The influence of this universal religious belief upon the character and conduct of citizens has always brought the subject under the cognizance of the founders and the governors of States (b). In this sense a great statesman

(a) De Leg. i. c. viii: Cicero was deeply impressed with the truth that the citizen who did not fear God could not adequately discharge any high or responsible office in the State, whether legal or relating to the administration of public affairs. See what he says about the Epicureans, severely in the De Legibus, and jocosely in his Epistulae:—"Sibi autem indulgentes et corpori deservientes atque omnia, quæ sequantur in vita quæque fugiant, voluptatibus et doloribus ponderantes... in hortulis suis jubeamus dieere, etiam ab omnï societate reipublicæ, cujus partem nec nòrunt ullam, nec unquam nosse voluerunt, paullisper faces-sant, rogamus."—De Leg. i. c. 13; et vide c. 15,

"Indicavit mihi Pansa meus Epicureum te esse factum... Sed quonam modo jus civile defendas, quum omnia tua causa facias non civim."—Ep. ad Fam. 12 (Trebatio).

(b) Hugonis Grotii, De Imperio summârum potestatum circa sacra Commentarius Posthumus: Paris, 1547.

Montesquieu, De l'Esprit des Lois, i. xxiv. cc. 14-18.

Discours, Rapports, et Travaux inédits sur le Concordat de 1801, les Articles organiques, etc. etc., par Jean-Étienne Portalis; publiés et pré-VOL. II.
and jurist has observed, "La religion en général est du "droit des gens" (c). The power exercised by those who claim to be the authorised expounders of the Divine will over the minds of their disciples is necessarily great, and frequently unlimited.

The reason of the thing required that persons and doctrines so intimately connected with the welfare of society should be in some degree subjected to the inspection and control of those who were responsible for it. Thus Grotius accurately observes, "Religio autem quamquam per se ad conciliandam Dei gratiam valet, habet tamen et suos in societate humana effectus maximos. Neque enim immerito" Plato religionem propugnaculum potestatis ac legum et "honestæ disciplinæ vinculum vocat" (rf).

CCLXXXII. Accordingly, to go back no further, we find that in most of the cities of Greece, and especially in Athens, the care of divine worship was committed to the magistrate, who was often also the priest (e).

Polybius singled out the religious instruction of the Romans (f), influencing as it did both the private conduct


"I, however, am far from inculcating persecution, although I venture to say that there might be a state of religion in a country which it might be the duty of the State to prohibit. Religion is not a mere matter of commerce between man and his Creator, but a lively motive of public action; and however it may become matter of conscience, it must become also, like other things, a motive of human conduct, and, of necessity, a subject of human laws. A State has a right to prohibit that of which the prohibition is essential to its security."—Lord Wellesley's Speech in the House of Lords, on the Motion for a Committee to inquire into the state of the laws affecting Roman Catholic Subjects, April, 1812.

(c) Portalis, ubi sup. p. 579.

(d) Grotius, L. ii. xx. 44. 3. He proceeds to cite some striking passages from Philo, Plutarch, Chrysippus, and Aristotle, and the Roman Law, which support this view.

(e) "Rex Anius, rex idem hominum Phœbique sacerdos."—Virg. Aen. iii. 80.

(f) Speaking of Numa, Livy says, "Ad haec consultanda procurandaque, multitudine omni a vi et armis conversa, et animi aliquid agendo occupati erant, et Deorum assidua insidens cura, quum interesse rebus
of the citizen and the public administration of the State, as
demonstrative of the superiority of their government over
that of all other nations; and he contrasts the general faith
which prevailed in the acts of the God-fearing Roman (g)
with the discredit universally attached to that of the de-
generate and irreligious Greek (h).

Long after the Republic had decayed under the fate which
this wise man had foretold to it, the _jus sacrum_ was still con-
sidered as a part of the public law (i), and found its place in
the laws of the heathen emperors. The celebrated definition
of jurisprudence, "rerum divinarum atque humanarum scien-
tia," viewed in this light, was not so incorrect as is some-
times supposed: it did not necessarily mean a knowledge of
theology, but rather a knowledge of the laws appertaining
to the _status_ of religion as one of the established institutions
of the State (k).

CCLXXXIII. (l) It is true that the great doctrine of the
Unity and Brotherhood of the human race revealed by our

---

humanis caeleste numen videretur, ea pietate omnium pectora inbuerat, ut
fides ac iusjurandum proximo legum ac pessarum metu, civitatem regeter,"
—L. i. c. 21.

Polyb. 6. vi.

(g) Cicero's observations on the College of Augurs are remarkable:—
six children of the principal Etruscans were, he says, by order of the
Senate, brought at one time to Rome,—"Ne ars tanta, propter tenuitatem
hominum, a religionis auctoritate abduceretur ad mercedem."—De Div.
i. 41.

"Sed dubium non est, quin hae disciplina et ars augurum evanuerit
jam et vetustate et negligentia. Itaque neque illi assentior, qui hanc scien-
tiam negat unquam in nostro collegio fuisset; neque illi, qui esse
etiam nunc putat, que mihi videtur' apud maiorem fuisset dupliciter, ut
ad reipublceae tempus nonnumquam, ad agendi consilium saepissime
pertinaret."—Cic. De Leg. ii. c. 13; et vide c. 9, et De Div. i. c. 15.

Dion. Halyc. i. ii. c. 16.

Polyb. 6. vi.

(h) Yet see Cic. De Leg. ii. c. 14.

(i) Dig. i. t. ii. 2, De Just. et Jure: "Publicum jus est quod ad statum
reipublice Romanae spectat. Publicum jus in sacris, in sacerdotibus, in
magistratibus consistit."

(k) Bynkershoek, De Relig. Peregrina, &c., c. 1.

Saviour was wholly opposed to the opinions and belief and to the philosophy of the ancients: and against it the Emperor Julian loudly and eagerly protested. But in the provisions of the Roman Law, as in those of the laws of other countries with respect to religion, thus incorporated with the constitution of the State, we read the great truth that the State is not a mere mechanical institution concerned solely with the external life of its citizens, but that it is built (m) of necessity upon foundations of a moral and spiritual character, and that this character is the principal element of its strength, and the real spring of its continued existence.

CCLXXXIV. The introduction of Christianity tended still further to strengthen those foundations, adding the sanctions of the Creator's revealed will (n) to the voice of conscience and the instinctive sense of right and wrong by which the duties of the citizen were supported and enforced.

At the same time the origin and nature of Christianity rendered its incorporation into the State, in the manner in which Pagan worship had been incorporated, impossible.

The Church began by direct and uncompromising hostility to the existing religion of the State (o), with which it refused to be in any way identified, and of which it was necessarily altogether intolerant. The maxim of later times, "Cujus "est regio, illius est religio," is blasphemous in theory and false in fact (p).

(m) "Denique in his delinquendi est gravius periculum, ubi Fides violatur, aut jurisjurandi Religio contemnitur, nam grave est fidem fallere quae justitiae totius firmamentum est, qua non solum republicae, sed omnis humana societas continetur, et quod perjurium atheismo sit detestabilius, cum perjuri numen agnoscere videantur, sed ipsum irridere audeant." — Zouch, part i. s. v. 5.

(n) "They who hold Revelation give a double assurance to their country." — Burke's Works, vol. x. p. 89. Speech on a Bill for the Relief of Protestant Dissenters,

(o) Such, for instance, as must, at this day, be the relation in which the Greek Church stands to the established religion of Turkey.


(p) Packman, i. 135. p. 162.
When Christianity had triumphed, and become not only one of the collegia licita but the actual religion of the nation, it was still, by the very charter of its being, a body distinct from the State; touching it, however, and being touched by it, in so many ways, that the teachers of its doctrines soon became endowed with goods and lands, either by individuals under the sanction of the civil power, or by the State itself. The Church became, to borrow a term familiar in modern times, established in every Christian kingdom.

It thus became a collegium licitum (q), under the protection of the State as to its establishment; but having a divine mission, a divinely constituted order, a divinely given doctrine, it remained, as it must ever remain, in all these respects, independent of human authority.

CCLXXXV. In return for endowment and protection (r) the Church gave the State a security beyond the reach of human laws, for the obedience and good conduct of its subjects. She taught that subjects should "render unto Cæsar the things that are Cæsar's, and unto God the things that are God's;" that temporal magistracies were "ordained

(q) "Neque societatem, neque collegium, neque hujusmodi corpus passim omnibus habere conceditur . . . item collegia Romæ certa sunt, quorum corpus Senatusconsultis atque Constitutionibus Principalibus confirmatum est . . . quibus autem permission est corpus habere collegii, societatis, sive cujusque alterius eorum nomine, proprium est ad exemplum Reipublicae habere res communes, aream communem, et actorem sive Syndicum, per quem, tanquam in Republica, quod communiter agi fierique oporteat, agatur et fiat."—Dig. l. iii. t. 4, 1.

Dig. xlvi. 22.

Cod. i. t. 2, 19, 23, 26. (De Sacrosanctis Ecclesiis) et t. 3. (De Episcopis et Clericis).

(r) Warnkönig says: "In prima (i.e. Juris Publici parte) est ponendum jus ecclesiasticum, apud veteres jus sacrum. Hoc jure definitur ecclesiae potestas et constitutio, magistratum ecclesiasticorum imperium et jurisdiction, omnisque hierarchie status. Introducta sunt hoc jure sacra, instituta sancta, ecclesiastica judicia et leges ad res privatæ publicæque religionis moderandas. Sæpe conjuncta esse solet cum hac juris publici parte institutionis publicæ et disciplinarum artiumque liberalium summa cura."—Instit. Juris Romani Privati, c. i. t. v. (Introduct.)
"of God;" that subjects must obey, "not only for wrath but also for conscience sake;" "that the fear of the Lord is the beginning of wisdom," and "that unless the Lord keep the city the watchman waketh but in vain."(s). The immediate result of Christianity was to strengthen the hands of government, to render patriotism a religious as well as a civil duty. "Tolle religionem," says Leibnitz (t), "et non invenies subditum qui pro patria, pro republica, pro recto et justo, discriminem fortunarum, dignitatum, vitaeque ipsius subeat, si, eversis aliorum rebus, ipse consulere sibi, et in honore atque opulentia vitam ducere possit"(u).

Montesquieu speaks in a similar strain: "Bayle," says he, "ose avancer que de véritables Chrétiens ne formaient pas un état qui pût subsister. Pourquoi non? Ce seraient des citoyens infiniment éclairés sur leurs devoirs, et qui auraient un très-grand zèle pour les remplir; plus ils croyaient devoir à la religion, plus ils penseraient devoir à la patrie. Les principes du Christianisme, bien gravés dans le cœur, seraient infiniment plus forts que ce faux honneur des monarchies, ces vertus humaines des républiques, et cette crainte servile des états despotiques"(x).

CCLXXXVI. Rome was the mistress of the world when the Christian Church was planted, and was still the mistress of the world when the Christian Church was established. The connexion therefore, at first, between Church and State was identical with the connexion between the Church and the Roman Empire (y).

To make this coincidence the more striking, Constantine divided the Roman Empire into four prefectures:—

(s) Psalm cxii. 10.
Ecclus. i. 16.
(t) Leibnitz, Epist. Censor, contra Puffendorf, s. vi.
(u) Robespierre’s remark is well known: "Si Dieu n’existait pas, il faudrait l’inventer."
(x) Esprit des Lois, I. 24, c. 6. These passages are cited in Walter’s Kirchenrecht, s. 38.
(y) Nobody now denies that the donation of Constantine to Pope
1. The prefecture of Italy.
2. Of Illyria, excluding the Western Illyria.
3. Of the Gallias.
4. Of the East.

Each prefecture was divided into Dioceses or Vicariates, and these again into Provinces. The principal city in each province was called, though not till late, in the language of civil life, the Metropolis.

It is remarkable that the Ecclesiastical division bore a close relation to this order of the State. The four Patriarchates resembled in many respects the four Prefectures.

The Patriarch of Rome comprised all the West, Italy, the Gallias, Illyria; the Patriarchs of Antioch, Alexandria, Jerusalem, and Constantinople occupied the territories comprised in the Prefecture of the East. Exarchs and Primates exercised a jurisdiction not unlike that of civil Vicars over Metropolitans.

In every province the principal city became the seat of an Episcopal See. It sometimes happened that one Metropolitan presided over the Bishoprics of several provinces (z).

Sylvester is wholly fabulous. But it excited the indignant regret of Dante:—

"Ahi, Costantin, di quanto mal fu matre
Non la tua conversion, ma quella dote
Che da te prese il primo ricco patre." Inf. 115.

Before Ariosto wrote, the fraud had lost its odour and stank. He found the donation in the repository of things lost on earth, the moon:—

"Di versate minestre una gran massa
Vede, e demanda al suo dottor, ch'importa.
L'elemosina è (dice) che si lassa
Alcun, che fatta sia dopo la morte.
Di vari fiori ad un gran monte passa
Ch'ebbe già buono odore, or putia forte,
Questo era il dono (se però dir lece)
Che Costantino al buon Silvestro fece."

Orland. Fur. c. 34, 80.


The English Canonists and Ecclesiastical Historians limit the Roman
CCLXXXVII. (a) The tendency and the object of Christianity was not merely to affect the spiritual condition of individuals, but to form them into a peculiar human Society.

The end of this Society was to obtain immortal happiness after death—the means were to believe in its Divine Founder and to will and to act in conformity with His commands. It was in its nature irrespective of the material order of things in which it was placed. It was a spiritual Society so far as a Society of human creatures could be; but being necessarily a Society, not of spirits, but of men, it stood in need of material signs and means to accomplish its end. It was a visible and material order of men united for a common object. As far as each individual was concerned, Christianity was confined to internal operation between him and his God; but as far as the Society was concerned, it required, like every other material union, that is, every union of corporeal persons, external means for its operation. It required human government, therefore, inasmuch as it was a human Society, in order that, by the use of external and material means, the spiritual end which it proposed to itself might be the easier obtained. This Society so outwardly shaped and constituted, is what we usually denominate the Church (b).

Patriarchate to a part of Italy, Sicily, Sardinia, and Corsica.—Bramhall's Just Vindication, vol. i. p. 156, ed. Oxon.

Bingham's Antig. ii. 17, 20.

(a) Saggio Teoretico di Dritto Naturale, appoggiato sul fatto, del P. Luigi Taparelli (Leovino, 1845), Parte quinta, Dissertazione quinta, c. 1–2.

The reader will find the Ultramontane theory stated with great acuteness of logic and admirable precision of language in this work.

(b) "The Church, being a supernatural society, doth differ from natural societies in this, that the persons with whom we associate ourselves in the one are men simply considered as men; but they to whom we be joined in the other are God, angels, and holy men. Again, the Church being both a society and a society supernatural, although, as it is a society, it have the self-same original grounds which other public societies have, namely, the natural inclination which all men have unto sociable life, and consents to some certain bond of association, which bond is the Law that appointeth what kind of order they shall be associated in, yet unto the Church, as it is a society supernatural,
This Society was independent of the territorial limits of kingdoms, but the individuals composing it must exist within those limits, they must be subjects or members of a State, a temporal Society, as well as of the Church, a Spiritual Society (c). If the State, in its corporate capacity, recognised the religion of Christ, and established a Church, then the individual Christians were bound by the double tie of private will and social duty to the authority of the Church. But if it happened that the State did not socially recognise Christianity, then the individual Christians must remain members of both Societies. The present state of Turkey might be cited as an illustration of the truth of this proposition.

In fact the duties and the rights of the citizens remain, and those of the Christian are superadded. The statement of Grotius on the subject is perspicuous and sound:—

"Atque ita absurdum non est dari duo Judicia summa, "sed generum diversorum, quae est in sacris Judicium "directivum Ecclesiae Catholicae, et Imperativum summa-"rum potestatum. Nam nec illo Judicio inter humana "ullum est majus auctoritate: neque hoc ullam majus "potestate" (d).

As the Church has a peculiar relation to the State, so the Christian nation has the speciale jus gentis fidelis (e) in its intercourse with Christian nations, as well as the jus

this is peculiar—that part of the bond of their association which belongs to the Church of God must be a Law supernatural, which God himself hath revealed concerning that kind of worship which His people shall do unto Him. The substance of the service of God, therefore, so far forth as it hath in it anything more than the Law of Reason doth teach, may not be invented of men, as it is amongst the Heathens; but must be received from God Himself, as always it hath been in the Church, saving only when the Church hath been forgetful of her duty."—Hooker, Ecclesiastical Polity, b. i. s. 15.

(c) The subject of a Foreign Spiritual Corporation is glanced at in the case of The Society for the Propagation of the Gospel, Sc. v. Wheeler et al., 2 Gallisson's (American) Reports, 104.

(d) Grotius, De Imp. summ. potest. circa sacra, c. v. p. 91.

(e) Vide ante, vol. i. p. 24.
commune with Heathen nations, who are members of the
great community of States. And so far the introduction of
Christianity would not appear to have given rise to any
difficulty in International Jurisprudence.

The difficulty, it will be seen, proceeds from the disputes
which have arisen among Christians and Christian nations
with respect to the external government of this spiritual, but
human, Society.

These disputes relate both to the person in whom this
authority is lodged, and also to the extent of that authority
among those who are agreed as to the person in whom it is
vested.

The reasoning of the Roman Church is this,—the external
and visible Church must be governed by an external, visible,
and infallible authority; that authority must be lodged in
one person, and that one person must be the Pope (f), without
whose sanction no bishop can be lawfully appointed, and
who, for the purpose of duly exercising the authority, must
possess a power irrespective of and superior to that of all
temporal Sovereigns. On the other hand, the Gallican (g)
and the English (h) Churches, and many Cis-montane

(f) Taparelli, par. v. dis. v. c. 2, s. 1411.

(g) Dupin states concisely the Gallican opinion, thus: "Verum ut
majorem his lucem afferamus, distinguenda sunt plura in Romano
Pontifice:—Primo, quod sit primus Episcoporum. Secundo, quod sit
Metropolitanus et Patriarcha. Tertio, quod aliquas habet prerogati-
vivas, aliqua jura peculiariter concessa. Quarto, quod habet potesta-
tem temporalem in patrimonium Sancti Petri."—De Ant. Eccles. Dis-
ciplina, Diss. Historica, iv. p. 368 (ed. 1788).

(h) The Anglican doctrine on this point is well stated in the Vindicæ
Ecclesiae Anglicæ by Mason (ed. 1625), p. 430. The dialogue in the
work is carried on by Philodoxus, a Romanist, and Orthodoxus, an
Anglican:—

"Phil.—Christus Dominus, supremum Ecclesiae caput, potuit per
seipsum omnes illas Ecclesiasticas actiones exercere, quam potestatem
alis tradidit.

"Orth.—Rectissime. Quam enim Apostolis prædicandi, baptizandi,
ordinandi Eucharistiam ministrandi concepit potestatem, quanta quanta
erat, ab ipso solo originem duxit.

"Phil.—Idem etiam dicendum est de Papa.

"Orth.—Esto, et de quovis Episcopo."
canonists, hold that the Episcopate is not necessarily dependent upon the Pope; they assert that during the first centuries of the Church, and at a still later period, the Patriarch of Rome exercised no jurisdiction, properly so called, over the other Patriarchs, though a great respect, approaching to homage, might have been originally paid by the Ecclesiastical authorities of all countries to the Bishop of the Imperial City—a respect which the Gallican Church is still willing to continue (i). The Protestant Churches, which have rejected Episcopacy, a fortiori deny the claims of the Papacy.

The importance of these two views, in their bearing upon International Law, is, as will be seen, very great. It must be the duty of the International Jurist to ascertain whether these Papal claims are consistent with the Rights of Nations (k); whether they are supported by credible evidence, by the records and practice of States; whether the claims have varied from time to time according to the energy of pontiffs and the weakness of princes, or whether they have been always inflexibly the same, flowing from the

(i) Taparelli's mode of disposing of the difficulty of the Gallican Church is edifying: "Non pretendiamo qui tacere teologicamente la opinione gallicana, ma godiamo nel considerare che la divisione da noi stabilita delle forme di governo, a rigor di filosofia, venga qui a giustificare la riprovazione, che soffrirono più volte dalla Chiesa, le famose proposizioni del 1682. I loro difensori non comprendeano che logicamente la Chiesa presso di loro diveniva repubblica, eppèrò non furono anatema, e si sono fratelli, ben cari fratelli: ma la loro conseguenza colà andrebbe a parare, ed ecco perchè nella vigna del vero non potea mettere radice, —eradicabitur." — Taparelli, ìb. 1435, note.

(k) Grotius (De Imp. circa saecra) cites with approbation the following passage from Suarez: "Semper autem servatum videtur ab hominibus ut licet particulares magistratus Civiles et Sacerdotales diversis homnibus tribuerentur, quia varietas actionum istam distinctiorem postulabat, nihilominus suprema potestas utriusque ordinis, praesertim quoad leges ferendas, in uno Principe collocaretur. Et ita Regibus et Imperatoriibus semper tributa fuit hac potestas in Romana urbe et imperio, ut ex historis constat. Idemque de aliis communitatibus verisimile est."—Tract. de Leg. &c. l. ii. qua. 29, art. iii.
reason of the thing (l); and whether the most extravagant claims have not been the legitimate consequences of the premisses laid down by the Curia Romana. It will be seen that the double condition of the Pope, as spiritual chief and temporal prince, has greatly complicated a question sufficiently difficult under a single aspect.

CCLXXXVIII. When the seat of empire was transferred to Constantinople, even this homage of comity, so to speak, was materially diminished. Theodosius II. indeed inserted an ordinance in his Code, that all nations subject to him should receive the faith which Saint Peter had delivered to the Romans; and Valentinian III. forbade the bishops of the provinces to depart from ancient usages without the sanction of the Venerable man, the Pope of the Holy City (m).

Nevertheless, the effect of the division of the Empire was to leave the Bishops of Rome practically without the protection of the Emperor, though, theoretically, he retained his pretensions both to the territory of Italy and to the allegiance of the Roman See. The generals of Justinian in the middle of the sixth century delivered Italy from the dominion of the Ostrogoths: but within twenty years from the period of the victory of Narses in Campania (n), a new foe, the Lombards, from the North of Germany, conquered the upper part of Italy, and planted himself at Pavia (o).

It was not long after this period that Pope Gregory the

---

(l) Vide ante, vol. i. c. iv.
(m) Codex Theodos. xvi. 1–2.
Die Römischen Päpste, ihre Kirche und ihr Staat, B. i. c. i.
Planch, Geschichte der christlich-kirchlichen Gesellschaftsverfassung, i. 642.

(n) Belisarius was recalled A.D. 549; Narses destroyed Tejas, the last Gothic king of Italy, A.D. 553.
Justinian died, A.D. 565.
(o) A.D. 572.
Great, who had in vain besought the Emperor Maurice not to confirm his election, became, by the force of circumstances and against his will, a temporal prince, and the Protector of Civil and Spiritual Rome against the foreigner and the Arian. Then were laid the foundations of the mediæval papacy. But we must hasten onwards.

CCLXXXIX. Of all the German races which had raised their rude and vigorous nationality upon the crumbling and corrupt civilisation of the Roman Empire, the Franks were for a long period the foremost and the most powerful in Europe; they too were among the first barbarians who embraced Christianity, and their subsequent connexion with the Patriarch of Rome laid the first foundations of that system the consideration of which must occupy an important place in a work upon International Law.

CCXC. The monarchy founded by Clovis (p) included nearly the whole of Gaul and the greater part of what is now called Germany. In the hands of his successors, the newly-founded kingdom was divided and brought to the verge of dissolution, but the Mayors of the Palace grafted the energy and talent of the Carlovingian upon the decaying stock of the Merovingian dynasty (q).

Pépin d'Heristal reunited the kingdom which he governed, though without the title of King; as did his illustrious son, Charles-le-Martel (r), who earned the gratitude of Christendom by delivering (s) her from the aggressions, till then resistless, of the infidel Saracen. Pépin-le-Bref, the son of Charles, added to the real power of the monarchy the title of King; which, for sixty-five years, the Carlovingians had allowed to decorate the puppets in whose name they ruled. Pépin-le-Bref (t) took a step fraught with the most important

---

(p) A.D. 485.
(q) A.D. 687, the date of the victory by which Pépin reunited Austria (Oesterreich) and Neustria (Westereich).
(r) A.D. 714.
(s) A.D. 732, 737, at Poitiers and Narbonne.
(t) A.D. 752.
consequences, both to the future relations of the Church and State in France, and to the international relations of every State with the See of Rome: he invoked the aid of religious sanction to secure his throne, and, first of the Frank Kings, caused himself to be crowned in the Cathedral of Soissons, by St. Boniface, the first Archbishop of Mayence.

St. Boniface, himself an Anglo-Saxon, was devoted to the Roman See. He persuaded the bishops, not only in Germany, but in Gaul, where they appear to have been previously independent, to acknowledge submission to the successors of St. Peter at Rome.

At the time of Pépin's coronation, the Roman See was in the deepest distress. The King of the Lombards (2) had seized upon the Exarchate of Ravenna, where the last remnant of the authority of the Greek Emperor remained, and threatened Rome with destruction.

Stephen II., the then Bishop of Rome, appears to have first endeavoured to renew his relations, long practically severed, with the Greek Emperor (x); but, as the danger became more and more pressing, he resolved to implore the assistance of the Franks, then renowned throughout Europe for their victories over the enemies of the Christian faith, and whose King, as St. Boniface had written, alone enabled him to execute his apostolical mission in Germany with safety or effect (y).

CCXCI. The consequences of this resolution have ever since affected the destinies of the world. The compact between the spiritual and secular Powers of Western Europe (z) was soon adjusted; the necessities of both arranged without difficulty the terms. Stephen II. consecrated Pépin anew in the Church of St. Denis, and at the same time also his two sons Charles and Carloman; he absolved the consecrated usurper from the oath of allegiance which he had

(u) Astolphus.
(x) A.D. 751.
(y) Ranke, b. i. c. i.
(z) Koch, Tableau des Réc. i. 32.
sworn to Childeric, the remaining phantom of the Merovingian dynasty; and adjured the Frank lords, in the name of Christ and St. Peter, to be faithful to their new Sovereign; and, lastly, he conferred on Pépin and his two sons the dignity of Patricians of Rome.

Pépin was not wanting in substantial marks of gratitude for the aid which the spiritual power had rendered to his new-made throne. He drove the Lombards out of the Exarchate (a), and conferred the fertile provinces comprised under that name, not upon the Greek Emperor, to whom by strict right they appertained, but upon the Bishop of Rome; declaring, with an oath, that he had embarked in the contest, not for the favour of many, but “pro amore Petri et venia delictorum” (b).

CCXCII. Grotius, in that part of his great work, De Jure Belli et Pacis, in which he argues that Kings who do not hold their sovereignties pleno jure cannot alienate any part of them, deals, among other supposed instances to the contrary, with the story that Louis, the successor of Charlemagne, restored the City of Rome to Pope Paschal (a.d. 817); and his language is remarkable respecting the character and status of the Pope and of the Roman people at this period: “Nec quod idem ille Ludovicus urbeb Romam Paschali Pontifici reddidisse legitur ad rem facit, cum Franci imperium in urbem Romam a populo Romano acceptum reddere populo eidem recte potuerint, cujus populi personam sustinebat is qui primi ordinis princeps erat” (c).

CCXCIJII. What Pépin began, Charlemagne completed (d). That mighty monarch, while engaged in the

---

(a) The Archbishop of Ravenna, while the war of the Lombards with Pépin and Charlemagne lasted, seized every opportunity of defying the authority, spiritual and temporal, of the Roman See.


Savigny, Geschichte des Römischen Rechts im Mittelalter, i. 359.

(b) Ranke, b. i. c. i.

(c) L. ii. 3, xiii.

(d) A.D. 768.
work of exterminating the Lombard dominion, repaired to Rome, and ratified the endowments of Pépin (e). Charlemagne was received at Rome with the honours due to an Exarch and Patrician (f), and under these titles he began to put in force that jurisdiction over the Ecclesiastical State which the Greek Emperors and Exarchs had exercised before him.

It was not, however, till after a quarter of a century had passed away that Charlemagne was fully installed in the dignity of his Imperial predecessors. The Pope again invited his all-powerful ally to Rome; but this time it was against a domestic and not a foreign foe. Leo III., like Pius IX. in our time, could no longer resist the contending factions which, in Rome itself, set at nought his authority. The victor of Western Europe reinstated the Pope in his authority, who, in return, placed upon his head (g), while he knelt at the altar of St. Peter’s, upon Christmas Day, A.D. 800, the crown of the Western Empire, and proclaimed him Emperor of the Romans.

This was one of the rare conjunctures—the reigns of Constantine and Justinian alone furnish similar instances—in which the Church and State were thoroughly incorporated. Certain it is, that these Emperors exercised, whether with or without the consent of the Church (h), functions and jurisdictions which partook largely of a spiritual character. Nor can it be denied that a new kind of power over religion was now conferred upon the Governor of the State. As a civil magistrate, heathen or Christian, he had always had control over all that concerned the welfare of society, and therefore, incidentally, some power over the subject of religion; but now he was constituted its protector (i).

(e) A.D. 774.
(f) Koch, Tableau des Règ., i. 42.
(g) The Pope seems to have considered the coronation as a necessary confirmation of the act of the civil or constitutional law.
(h) Phillipps, Kirchenrecht, iii. 60, 61.
(i) See some remarks of Portalis (as cited in Lequeur, iv. 535) upon the fifth article of the Organic Articles of Napoleon.

Phillipps, K. R. iii. 382.
CCXCIV. But the Papacy, thus placed under the protection of the Frank Emperor, remained, more or less, in the same relation to his successors, the Emperors of Germany, until the 1st of August, 1806 (k); they then became the Emperors of Austria, and this relation, long practically disused, nominally, as well as really, ceased.

The hands of Charlemagne’s successor were too feeble to hold the sceptre of his vast dominions, from the divisions of which sprung the distinct nationalities of States and, in some measure, of Churches, which afterwards composed the commonwealth of Europe.

It should be observed that, by the Constitution of Charlemagne, the German and French clergy were under the control of the Bishop, the Bishop of the Metropolitan, the Metropolitan not of the Pope, but of the Emperor.

(k) In a little pamphlet published at Vienna, 1849, entitled Deutsch oder Russisch, will be found some striking remarks on the consequence of this change: — “Die Deutsche Kaiserstellung war die Grundlage, auf welcher die österreichische Monarchie emporgewachsen. Ungeachtet des unglücklichen politischen und kirchlichen Systems, durch welches sich Oesterreich mehr und mehr von Deutschland absonderte, war die historische Kaiseridee, doch nach innen und aussen mächtiger, als die habsburgischen Fürsten einsahen,” u.s.w. Pp. 6, 7.
CHAPTER III.

THE GROWTH OF THE AUTHORITY AND PRETENSIONS OF THE POPE.

CCXCV. For a while after the death of Charlemagne, the Papal power seems to have been greater than the Imperial; but soon after the German Emperors were seated on the throne, the political subjection of the Popes is, as a matter of history, unquestionable. They were content for a time to countenance with their authority a new political system which sprung up about this period in Europe, according to which all Christians belonged to a great Republic, of which the Spiritual chief was the Pope, and the Temporal chief the Emperor (a).

For a time this doctrine was a formidable instrument in the hands of the Emperor. The great Protector of the Church, in the exercise of his office, watched over the interests of the Roman See, convened general councils, and claimed the prerogative of nominating, or at least confirming, the Pope. Such a prerogative was exercised from the time of Otho the Great to that of Henry IV. Henry III. deposed three schismatical Popes, and nominated more than one German Pope.

CCXCVI. Otho and his successors created the great ecclesiastical princes of Germany (b), thereby weakening the empire, but unintentionally constituting, perhaps, a defence for the German National Church against Rome, such as at

(a) Koch, i. 78-81.
(b) German canonists contend that the Roman cardinalate was formed on the model of these ecclesiastical princedoms.
the Council of Ems, in the reign of Joseph II., all but established the complete and entire independence of that Church from the See of Rome.

Before the beginning of the fourteenth century, the majesty of the German Imperial crown had faded away; the federal system had destroyed it, and the Emperor was only the Suzerain of the many independent States which composed it (c). Upon the ruins of the Imperial authority arose the edifice of Papal power in its fullest dimensions; of this edifice the skill, energy, and ability of Gregory VII. (d) (Hildebrand), about the year 1073, had already laid the deep and careful foundations, and from A.D. 1074 to 1300 it lifted up its head over all the dominations of earth.

CCXCVII. And here it must be observed that these events had imported new and strange elements into International Law:

First. A great spiritual had become a considerable secular power, and the difficult question had arisen how were other secular States to carry on their relations with it?

Secondly. This spiritual power was no longer identified with the limits and extent of one dominion; it claimed equal authority over many distinct kingdoms, which stood as it were apart from, and yet were most intimately connected with, this foreign power. It wielded an authority over the citizens of every kingdom, and exacted an allegiance upon oath from them far above that which the municipal law of their own country could impose, or the temporal Sovereign enforce.

Thirdly. In process of time it collected a feudal revenue of no inconsiderable amount from the governors and subjects of foreign realms.

Fourthly. This spiritual ruler claimed and exercised a power of absolving Sovereigns and subjects from their oaths.

(c) Koch, i. 1.
(d) His election was confirmed, at his own request, by the Emperor. His Papacy extended from 1073 to 1085; he had been subdiaconus under six Popes.
Fifthly. This spiritual power claimed for the officers which it employed in each kingdom, a status wholly distinct from that of the subjects of each kingdom, whether these officers were or were not born subjects of the kingdom (e). This separate status was claimed for the persons and the property of the clergy (clerus), and the law by which they were to be governed. Justinian had intended to Christianise as well as compile the fabric of Roman jurisprudence. He meant to be the religious as well as the civil legislator of the world. The Christian faith, the Christian doctrine, the status of the Christian clergy in all its branches, are the subjects of his laws (f).

It was not, however, in their clerical character, but as subjects in their civil capacity, that the clerus claimed to live under the Civil Law of Rome; and it appears even from one of the constitutions of Clothaire, as early as A.D. 560, and from various records of the ninth and eleventh centuries, that in the Frank kingdom the clergy were permitted to live under the Roman law. It seems, however (and the fact is very remarkable), that even then the clergy in Lombardy had the option of declaring whether they would live under the Roman or Lombard law (g). So early was the struggle begun between the nationality of the individual and the law of the order to which he belonged.

But while the clergy lived under the Civil Law of Rome, they were pretty much in the same predicament as the conquered provincials, who were equally, in the early part of the Middle Ages, allowed to choose a personal law distinct from the law of their domicil (h). When various foreign spiritual

---

(e) Savigny, Geschichte des Römischen Rechts im Mittelalter, i. 141, 142.
(f) Milman, Hist. of Latin Christianity, i. 355, &c., contains an able review of these laws of Justinian.
(g) "Ego Theopertus archipresbyter Ecclesiae Sancti Juliani qui professus sum legem vivere Langubardorum."—Vide Savigny, ubi supr. It seems, however, that this power of option was confined to Lombardy.
(h) Savigny, Geschichte R. R. ii. 274. At first the spiritual edicts contained large and literal extracts from the Roman Civil Law.
enactments, and at last the elaborate compilations of the Canon Law, were promulgated, the difficulty of reconciling a foreign spiritual with a domestic secular allegiance became greater; or at least, the distinction became sharper and more prominent between the two.

That those whose sacred office it is to be the teachers of religion should be clothed with a privileged and cosmopolitan character seems to be in accordance with the natural feelings of man in every part of the world not wholly barbarous and uncivilised. We know, from the travels of a most intelligent Roman Catholic missionary in China and Thibet, that in these interesting countries this notion very generally prevails (i); but the subject immediately under our consideration is that of an imperium in imperio, caused by the double allegiance of the native clergy.

(i) "Nous nous hâtâmes de nous rendre chez le Régent, et de lui faire part de la déplorable entrevue que nous avions eue avec Ki-Chan. Le premier Kalon avait eu connaissance des projets de persécution que les Mandarins chinois tramaient contre nous. Il tâcha de nous rassurer, et nous dit que, protégeant dans le pays des milliers d'étrangers, il serait assez fort pour nous y faire jouir d'une protection que le gouvernement thibétain accordait à tout le monde. Au reste, ajouta-t-il, lors même que nos lois interdiraient aux étrangers l'entrée de notre pays, ces lois ne pourraient vous atteindre. Les religieux, les hommes de prière, étant de tous les pays, ne sont étrangers nulle part; telle est la doctrine qui est enseignée dans nos saints livres. Il est écrit: La chèvre jaune est sans patrie, et le Lama n'a pas de famille. . . . Sha-Ssa étant le rendez-vous et le séjour spécial des hommes de prière, ce seul titre devrait toujours vous y faire trouver liberté et protection.

"Cette opinion des Bouddhistes, qui fait du religieux un homme cosmopolite, n'est pas simplement une pensée écrite dans les livres; mais nous avons remarqué qu'elle était passée dans les mœurs et les habitudes des lamaseries. Aussi-tôt qu'un homme s'est rasé la tête, et a revêtu le costume religieux, il renonce à son ancien nom pour en prendre un nouveau. Si l'on demande à un Lama de quel pays il est, il répond: Je n'ai pas de patrie, mais je passe mes jours dans telle lamaserie. Cette manière de penser et d'agir est même admise en Chine, parmi les bonzes et les autres espèces de religieux, qu'on a coutume de désigner par le nom générique de Tchou-kia-jin, homme sorti de la famille."—Voyage dans le Thibet, par M. Huc, Prêtre, Missionnaire de la Congrégation de Saint-Lazare, vol. ii, p. 357.
CCXCVIII. The collision between the two powers of Church and State, accordingly, arose soon after the time of Charlemagne, and has continued in a greater or less degree up to the present time.

The temporal Sovereign soon began to claim as incidents both to his royal status, and to the independence of his country, various rights, which had for their object the control of Papal encroachment; of this nature were what are sometimes designated collectively as *Jura majestatis circa sacra*, the principal of which were:

1. *Jus advocatiae*—the right of protecting the Church establishments in his dominions (*Schutzrecht*), that right which in private patrons was called the *jus patronatús*.

2. *Jus cavendi*—the right of preventing the introduction of laws for the government of the national clergy at variance with their civil obligations (*Recht der Vorsorge*).

3. *Jus inspiciendi*—the right of inquiring into the manner in which the temporalities of this great corporation in his kingdom were administered, and of rectifying abuses (*k*).

CCXCIX. Now, for the first time, it should seem that the Roman Pontiff claimed the title of Pope (*l*), to the exclusion of all other bishops, who had hitherto been equally designated by it. The celibacy of the clergy, which had taken no root in Germany, England, or the northern kingdoms, and was continually disregarded in France and Spain, was practically enforced, and a powerful link which connected that order with the State was broken off, while a new link which connected it with a foreign power was forged. (*m*) The Popes ceased to date their acts from the years of

---

(*k*) *Traité de la Prérrogative royale*, i. ch. viii. (Lorieux.)


(*m*) See that monument of German industry and erudition, *Christliche Kirchengeschichte, von J. M. Schröckh*, xxvi. Theil 86, for the (Concordatum Wormatienae) Concordat of Worms, A.D. 1122, concluded between Henry V. and Pope Calixtus II. The Sovereigns were allowed, contrary to Gregory VII.’s intention, to preserve the bare feudal tie, by presenting with the sceptre the *regale* to the Bishop. The important words in the Concordat are, “Electus per sceptrum regale abs te accipiat.”

*Koch*, ib. 121.
the reign of the Emperor, or to stamp their coin with his impress; the investiture of the ring and crosier, which bound the clergy very closely to the State, was successfully refused. The Sovereign was bound to nominate or confirm the nomination of any prelate. The Prefect of Rome was required to take the oath of homage and allegiance to the Pope, instead of to the Emperor; and it was with truth that Gregory VII. wrote to the German nation respecting the Emperor:—"Non ultra putet sanctam Ecclesiam sibi subjectam, sed praetam ut dominam" (n). Quite consistently he claimed the empire as a fief of the Roman Church, and exacted from Hermann of Luxemburg, whom he set up as an anti-Emperor to Henry IV., a formal oath of vassalage. Tribute was exacted from and paid by the greater part of European States to the Pope. Royal dignities were conferred and taken away, oaths of loyalty imposed and annulled at the bidding of the Roman See (o). Hitherto the Emperors had exercised the right of confirming the election of the Popes and of deposing them; the same rights were now claimed by the Popes over the Emperors, and indeed over all other Sovereigns. It was, perhaps, a natural consequence of extending the spiritual power of excommunication to secular matters. The multiplication of religious orders claiming exemption from the jurisdiction of the State and devoted to the Roman See, though one of those orders was destined to furnish its deadliest enemy, tended, as well as the Crusades, to strengthen the hands of the Pope; for it was not merely against infidels that this weapon was used, Crusades were preached by Popes against refractory Christian Kings and Republics, such as Venice in 1309 (p)

(n) Epist. l. iv. c. 3.
Koch, ib.
(o) Collier, speaking of Becket's opposition to the Constitutions of Clarendon (A.D. 1164), observes, "His tenet, that the Civil Government had its authority from the Church, was a grand mistake, and misled his practice."—Church History, vol. ii. p. 328. ed. 1840.
(p) Portalis, Introd. vii.
against schismatical princes, such as the Greeks and Russians; against pagans, like the Slavonic tribes on the Baltic; against heretics, like the Vaudois, the Albigenses, and the Hussites (q).

A confusion of ideas generated a confusion of authorities. Heresy, which, if it attacked the law of the State, might be a political crime, was punished with equal severity when it was a religious error. Infidelity to the Church was put on the same footing as rebellion against the throne. The Inquisition secured to the ecclesiastical authority the arm of the secular power, without any right of inquiry or intervention as a condition of its use (r). Meanwhile the territory of the Roman See was, from various causes, largely increased; so also was her wealth, by contributions (annates) from all countries, and her power, from the causes already mentioned, to which should be added her claims to collate to benefices which, under the pretext of rights of concurrence and prevention, she often enforced to the injury of the national prelate (s).

It is true that many of these pretensions, especially the last, were founded upon the decretals of Isidore, now universally acknowledged to have been forged during the early part of the ninth century (t); but it is difficult to deny that they flowed, as strict logical consequences, from the principles on which Rome—who, to borrow the French expression "ne recule pas"—founded, both at this and at a much later period, her authority (u).

(q) Koch, ib. 136, 137, notes.
(r) Portalis, ubi sup.
(s) Koch, 127, 111.
(t) "It is impossible to deny (Dean Milman says), that, at least by citing without reserve or hesitation, the Roman Pontiffs gave their deliberate sanction to this great historic fraud."—Hist. of Latin Christianity, vol. i. p. 379.
(u) Müller's defence is eloquent and ingenious:—"Wenn die Hierarchie ein Uebel ware, besser doch als Despotie; sie sey eine leimere Mauer, sie ist's doch gegen Tyrranei. Der Priester hat sein Gesetz, der Despot hat keins; jener beredet, letzterer zwingt; jener predigt Gott,
CCC. About 1152 A.D., the Decretum, a systematic compilation of the existing canons and laws of the Church, was compiled by Gratian and approved of by the Pope. About 1235 A.D., Pope Gregory IX. caused his chaplain to reduce into a regular order and system the constitutions of former Popes, including with them his own, and also the canons of the third (x) and fourth (y) Councils of Lateran; these are the Decretals. The Sext or Sixth book of Decretals was added by Boniface VIII.; Clement V. began another compilation, afterwards published, called The Clementines; another was made by John XXII., constituting the Extravagantes Johannis. To this were added, in 1483, other decrees of Popes, the Extravagantes Communes. These celebrated compilations received the most deliberate stamp of the Roman Church's approbation, and were ordered to be publicly taught in all her schools, and to become the law of all her tribunals. The provisions contained in them have never been expressly repealed by the Papal authority which originally sanctioned them; though many canonists hold that some of them have fallen into desuetude.

These compilations constitute that body of Papal Law which is known by the name of Corpus Juris Canonici.
It is intended to be the law of a Foreign Spiritual Chief for the government of a particular class of the subjects of independent States. To all nations, however, but the Roman States, it constitutes a body of Foreign Law. It is now universally acknowledged that it depends, as well as the *jus novissimum*, or later Canon Law, for its civil authority, upon the degree of *Reception* which has been accorded to it by the State.

Now in this body of Canon Law are contained, as will be seen in the following chapters, principles and doctrines utterly subversive of the independence of States, and inconsistent with the first principles of International Law.
CHAPTER IV.

THE CORPUS JURIS CANONICI—THE PRINCIPLES CONTAINED THEREIN, AND IN SUBSEQUENT BULLS, AT VARIANCE WITH INTERNATIONAL LAW.

CCC I. The Decretals which appear to be inconsistent with the independence of Foreign States, are known by the following titles, taken from the words with which they begin:—

1. Venerabilem.
2. Solitae.
3. Ad Apostolicae.
5. Quod olim.
6. Unam Sanctam and Meruit.
7. Romani Principes.
8. Pastoralis.
9. Si Fratrum.
10. De Consuetudine.

CCC II. The Emperor Henry VI. died in A.D. 1197. The majority of the electoral Princes chose Philip of Swabia for his successor; the minority, Otho of Brunswick, son of Henry the Lion. Philip had been excommunicated by the Pope for spoliating the Church’s property. Both Princes were crowned. Innocent III. sent a legate into Germany, ordering the Princes to acknowledge Otho.

Duke Berthold of Zähringen, with the other Princes who supported Philip, sent a complaint to the Pope that his legate had done wrong, whether he acted in the capacity of elector or of judge.
As an elector he had thrust his sickle into another man's harvest, and derogated from the rights of the Princes. As a judge he had decided in favour of one party in the absence of the other, who had not been cited.

Innocent replied to this in a letter which appears as the Thirty-fourth chapter of the Sixth title of the First book of the Decretals of Gregory IX., and begins with the word Venerabilem, and was issued probably in A.D. 1202. This Decretal opens with a recital of the above-mentioned complaints, and goes on to recognise the power of election to be by law and usage vested in the Princes: "praesertim cum ad eos jus et potestas hujsonmodi ab Apostolica sede per venerit, quae Romanum Imperium in personam magnifici Caroli à Graecis transtulit in Germanos." The Princes, on the other hand, ought to acknowledge, and have acknowledged, "quod jus et auctoritas examinandi personam electam in Regem, et promovendam ad Imperium, ad nos spectat, qui eum inungimus, consecramus et coronamus. Est enim regulariter et generaliter observatum, ut ad eum examination personae pertineat, ad quem impositio manús spectat." The legate had not discharged the office of an elector (electoris) or a judge (cognitoris), but of a denouncer (renunciatoris) of an improper choice. The voters for the improper person had thrown away their votes (a). The unfitness of the chosen was indisputable; "sunt enim notoria impedimenta Ducis, seilicet excommunicatio publica, perjurium manifestum, et persecutione divulgata, quam progenitores ejus et ipse præsumperunt in Apostolicam sedem et alias Ecclesias exercere."

Moreover, the Duke had taken an oath against being Emperor. If it were an unlawful oath, it bound him as the Israelites were bound by their oath to the Gibeonites, though fraudulently procured.

(a) A maxim, it may be observed, subsequently incorporated into English jurisprudence.—Oldknow v. Wainwright, 2 Burnow's Reports, 1017.
Besides, "utrum vero dictum juramentum sit licitum vel " illicitum, et ideo servandum an non servandum extiterit, " nemo sane mentis ignorat ad nostrum judicium pertinere."

Lastly, it is suggested that if the Duke were to succeed his brother, who had succeeded his father, the electors would seem to lose their liberty of election, as the dignity would appear hereditary.

The remarkable points in this Decretal are the assertions:

1. That the right of the electors was derived through the Roman See.
2. That the Pope had a right to examine, and therefore to reject, the elected whom he was called upon to consecrate and crown.
3. That an improper choice by the majority gave the Pope the power of sanctioning the choice of the minority.
4. That excommunication, and ancestral as well as personal offences against the Roman See, disqualified a person from being elected.
5. That to the Pope it belonged to judge whether a person should be absolved from an oath, whether it were lawful or unlawful, given bona fide or procured by fraud.

CCCIII. About the same time (A.D. 1200) the same Pope wrote to the Emperor at Constantinople touching the injury done to the Patriarch of Constantinople by placing him on a footstool to the left of the throne.

In this Decretal, the Sixth chapter of the Thirty-third title (b) of the First book of the Decretals, and which begins Solitae, the Emperor is shown the folly of supposing that the passage in St. Peter's Epistle (i. 2-13) could in any way indicate that the Priesthood was subject to the Temporal Power. Various reasons are alleged—the last is very remarkable:

"Præterea nōsse debueras" (the Pope says to the Emperor), "quod fecit Deus duo magna luminaria in firmamento

(b) De Majoritate et Obedientia.
"Ad firmamentum igitur cæli, hoc est, universalis Ecclesiae, "fecit Deus duo magna luminaria, id est, duas instituit dig-
"nitates, quæ sunt Pontificalis auctoritas, et Regalis potestas.
"Sed illa, quæ præest diebus, id est spiritualibus, major est:
"quæ vero carnalibus, minor: ut, quanta est inter solem et
"lunam, tanta inter Pontifices et Reges differentia cognos-
catur. Hæc autem si prudenter attenderet Imperatoria "celsitudo, non faceret, aut permetteret Constantinopoli-
"tanum Patriarcham, magnum quidem et honorabile "membrum Ecclesiae, juxta scabellum pedum suorum in "sinistra parte sedere: cum alii Reges et Principes, Archie-
piscopis et Episcopis suis (sicut debent) reverenter assur-
gant."

It is difficult to extract any other position from this Decretal than that the kingdoms of the earth were in all respects subjected to the Church, and, therefore, to the Pope (c).

CCCIV. The advantage which accrued to the most extravagent of Papal claims from the baseuess and wickedness of King John of England, is a well-known page of history. Before, however, John became "a gentle convertite" (d) and resigned his crown to the Pope, that monarch had invoked the interference of Rome to stay the irruption of King Philip in Normandy.

A "denunciatio" was made by John to Innocent III. against Philip, charging him with the breach of a truce made between France and England.

Innocent wrote on behalf of John to Philip, who returned for answer that the Pope had no right to interfere between Kings, or between him and his vassal. Then Innocent, in

(c) Walter thinks that this Decretal says no more than that Christen-
dom was divided between the authority of the King and the Church—
that the Pope was at the head of the Church, and therefore the central point of spiritual life.—Kirchenrecht, s. 41.
(d) King John, act v. sc. 1.
the year 1204, issued the Decretal (e), beginning "Novit ille," which may be divided into three parts:—1. An assertion of the general principle of Papal jurisdiction in these matters, viz., that though he had no jurisdiction "judicare de feudo," yet he had "decernere de peccato;" that John had, according to the Scripture, "told to the Church" (f) the offence of his brother King, and the Pope therefore, "ad regimen universalis Ecclesiae vocati," must hear the cause by himself or his legate. That his power to do so was the gift of God, not of man; that there was no exemption for Kings any more than for private persons; that the Emperor Theodosius had even laid down in his Code that at any time, and in any suit, the appeal of either plaintiff or defendant to Rome put an end to every inferior jurisdiction.

2. That a charge of breach of faith to a treaty (rupta pacis fædera) no doubt appertained, ratione causa, to the Church.

3. Therefore "predicto Legato dedimus in præceptis, ut (nisi Rex ipse vel solidam pacem cum prædicto Rege reformat, vel saltem humiliter patiatur, ut idem Abbas et Archiepiscopus Bituricen de plano cognoscant, utrum justa sit quaerimonia, quam contra eum proponit coram Ecclesia Rex Anglorum, vel ejus exceptio sit legitima, quam contra eum per suas nobis literas duxit exprimendam) juxta formam sibi datum a nobis procedere non omittat."

The legate accordingly went to Meaux, held a council there, and began to proceed against Philip by censures. The French Bishops appealed to Rome; the appeal was received. The representative of the Bishops appeared; John was cited, and, not appearing, the cause was decided, in pain of his contumacy, in favour of France, and the

(e) Decret. Greg. ix. i. 2, t. i. c. xiii.
(f) St. Matthew, c. xviii.
crown of England was in consequence stripped of the greatest part of its continental possessions (g).

CCCV. The Emperor Frederic II., who began his reign A.D. 1212, waged nearly a forty-years' war with the pretensions of Rome.

The end of the contest is well known. He was deposed on the 17th July, 1245, by a sentence of Innocent IV., with the advice of the Council at Lyons. All his subjects were released from their obedience; all who might hereafter aid him were excommunicated. The sentence was duly placed by Boniface VIII., under the title "de sententia et re judicata," in the sixth book of the Decretals (h); it is known by the title ad Apostolica.

Four principal premises are stated for the conclusion of the sentence:—

1. His frequent perjury, shown in violating the peace between the Church and the Empire.

2. His sacrilege, in imprisoning certain cardinals and prelates on their way to the council, convened by Innocent's successor.

3. A vehement suspicion of heresy (i).

4. He had harassed both ecclesiastics and laymen in the kingdom of Sicily, which he held as a fief from the Pope, and which he had exhausted by his tyranny.

5. He had entered into negotiations with the Saracens, and carried on a criminal intercourse with Saracen women.

The Pope, it will be seen, founded his right to judge, and his power to depose Kings, upon the declaration of Our Lord

(g) Phillipps, K. R. iii. 238.

(h) L. 2. t. 14. The Bullarium (Cocquelines, Romæ, 1740) contains some various but unimportant readings of this sentence.

(i) "De haeresi quoque non dubii et levibus sed difficilibus et evidentibus argumentis suspectus habetur." This is pretty much in the style of Dogberry's reasoning, "Masters, it is proved already that you are little better than false knaves; and it will go near to be thought so shortly."—Much Ado about Nothing, act iv. sc. 2.
to St. Peter: “Whatsoever thou shalt bind on earth shall “be bound in heaven” (k).

The condemnatory part of the sentence is as follows (l):—

This sentence was received as law in various parts of Christendom; and though Frederic II. maintained a strong

(k) St. Matthew xvi. 19.
(l) The avowed objects of convening this First Council of Lyons were to take into consideration the abuses of the Church and the defence of Constantinople, then threatened by the Turks.—See the History of the Council at length, Matthew Paris, 663, &c. Ward’s Law of Nations, ii. 59–71.
(m) The words in Italics are in the Bullarium. Vide ante, note (i).
(n) Phillipps, in his Kirchenrecht published 1850, laments the necessity, but defends the authority and lawfulness, of the Pope’s sentence.—B. 3. pp. 221–3.
party in the Empire to the last, the sentence was published in England by Henry III., and the Ecclesiastical Princes of Germany elected a new King of the Romans.

CCCVI. The Second Council of Lyons, held thirty years afterwards, decided upon the confirmation of the election of the Emperor Rodolph, the renunciation of Alphonso, King of Arragon, to the Imperial dignity, and the excommunication of those who should interfere with a priest publishing Ecclesiastical censures against a Sovereign (o).

CCCVII. It will have been observed that the sentence upon the Emperor Frederic II. was given by the advice of the Council at Lyons: and we find the second Council of Lyons taking cognizance of questions of great secular importance. The Ecumenical Councils (p) had, in course of time, become a tribunal, before which were discussed the principal International affairs of Christendom, not only articles of faith and matters of religion, but the conduct of Princes, their trial and punishment, the precedence and rank of nations, and the disputed successions to kingdoms. These Councils were called, even by Voltaire (q), the Senate of Europe.

The canonists define a Council to be an assembly of prelates and doctors, to settle matters concerning religion and the discipline of the Church (r).

These Councils admit of various subdivisions, into (1) General Councils, (2) National Councils, (3) Provincial Councils, (4) Diocesan Councils. It is only, however, with General Councils that International Law is concerned.

These Ecumenic or General Councils are divided into (a) those which form a portion of the Corpus Juris Canonici (the effect of which upon International Law will presently

(o) Ward, ii. 73.
(p) Ward, ib. 55, 56.
(q) Essai sur les Moeurs et l'Esprit des Nations, ch. lxvii.
(r) Monsieur Durand de Mauflane's Dictionnaire de Droit canonique, tome premier, titre Concile.
PAPAL CLAIMS.—FREDERIC II.—"AD APOSTOLICÆ." 355

be noticed), and (β) those which have been held subsequent to these compilations.

With respect to the former, according to the authorities of the Latin Church, there have been —

(a) Eight General Councils in the East.

1. Nice (1) . . . . . . . . 325
2. Constantinople (1) . . . . . 381
3. Ephesus . . . . . . . . 431
4. Chalcedon . . . . . . . . 451
5. Constantinople (2) . . . . . 553
6. Constantinople (3) . . . . . 680
7. Nice (2) . . . . . . . . 787
8. Constantinople (4) . . . . . 869

Seven General Councils in the West.

9. Lateran (1) . . . . . . 1123
10. Lateran (2) . . . . . . 1139
11. Lateran (3) . . . . . . 1170
12. Lateran (4) . . . . . . 1215
13. Lyons (1) . . . . . . 1245
14. Lyons (2) . . . . . . 1274
15. Vienne . . . . . . . . 1311

With respect to the latter, there have been (β), according to the same authority, seven General Councils, "quorum nulla in corpore juris mentio fit."

16. Pisa . . . . . . . . 1409
17. Constance . . . . . . 1414
18. Basle . . . . . . . . 1431
19. Florence . . . . . . . . 1439
20. Lateran (5) . . . . . . 1512
21. Trent . . . . . . . . 1545
22. Vatican or Rome (s) (unfinished) . 1870

The division of General Councils is adopted by the Latin Church. But it is incorrect, and contradicted by undoubted historical facts. The Greek Church does not recognise any œcumenical Council since that of Constantinople in

(s) Concilium Vaticanum. See a very remarkable work, Documenta ad illustrandum Concilium Vaticanum anni 1870, published by Dr. J. Friedrich at Nordlingen, 1871.
869 A.D. The English Church has recognised no General Council since the period of the Reformation.

It is manifest that a much greater International (t) authority and influence is to be ascribed to the Councils of the Undivided Church than to those which have been holden by one branch only of the Church.

With respect to the four first Councils, Justinian decreed that the canons contained in them should be observed as laws (u); and the Canon Law declares "Inter cetera Concilia, quatuor esse scimus venerabiles Synodos, quae totam principaliter fidem complectuntur, quasi quatuor Evangelia, vel totidem Paradisi flumina" (x).

In England, the Legislature enacted that the High Commissioners appointed by Queen Elizabeth should have no power to "adjudge any matter or cause to be heresie, but only such as have heretofore been determined, ordered, or adjudged to be heresie, by the authority of the Canonical Scriptures, or by the first four General Councils, or any of them, or by any other General Council wherein the same was declared heresie by the express and plain words of the said Canonical Scriptures, or such as hereafter shall be ordered, judged, or determined to be heresie, by the High Court of Parliament of this realm, with the assent of the Clergy in their Convocation" (y).

(t) It is probably with reference to these Councils, that Grotius says:

"Synodici canones qui recti sunt, collectiones sunt ex generalibus legis divine promuntiatis, ad ea, quae occurrunt, aptatae; hi quoque aut monstrant, quod divina lex precipit, aut ad id, quod Deus suadet, hortatur. Et hoc vere Ecclesiae Christianae est officium, ea quae sibi a Deo tradita sunt tradere et eo quo tradita sunt modo."—De J. B. et P. (Proleg.) 51.

(u) "Sancimus igitur, vim legum obtinere sacras ecclesiasticos canones in sanctis quatuor synodis expositos vel confirmatos, hoc est in Nicena trecentorum decem et octo, et in Constantinopolitana centum quinquaginta sanctorum patrum, et in Ephesina prima, in qua Nestorius condemnatus est, et in Chalcedonensi, in qua Eutyches cum Nestorio anathemate percessus est. Predictarum enim sacrarum synodorum et dogmata ut sacras scripturas suscipimus, et canones tanquam leges observamus."—Nov. cxxxii. 1.

(x) Decret. I. Dist. xv. c. i. s. 1, et vide c. ii.

(y) 1 Eliz. c. i. s. 36.
The International character of these General Councils is nowhere more forcibly stated than in the work of a celebrated English divine:—

"Now as there is great cause of communion, and consequently of laws, for the maintenance of communion amongst nations, so, amongst nations Christian, the like in regard even of Christianity hath been always judged needful. And in this kind of correspondence amongst nations, the force of General Councils doth stand. For, as one and the same Law Divine, whereof in the next place we are to speak, is unto all Christian Churches a rule for the chiefest things, by means whereof they all in that respect make one Church, as having all but one Lord, one faith, and one baptism (z), so the urgent necessity of mutual communion for preservation of our unity in these things, as also for order in some other things convenient to be everywhere uniformly kept, maketh it requisite that the Church of God here on earth have her laws of spiritual commerce between Christian nations—laws, by virtue whereof all Churches may enjoy freely the use of those reverend, religious, and sacred consultations, which are termed Councils General. A thing whereof God's own blessed Spirit was the Author (a); a thing practised by the holy Apostles themselves; a thing always afterwards kept and observed throughout the world; a thing never otherwise than most highly esteemed of, till pride, ambition, and tyranny began, by factions and vile endeavours, to abuse that Divine intention unto the furtherance of wicked purposes. But, as the just authority of civil courts and parliaments is not therefore to be abolished, because sometimes there is cunning used to frame them according to the private intents of men over-potent in their commonwealth, so the grievous abuse which hath been of Councils should rather cause men to study how so gracious a thing

(z) Ephes. iv. 5.
(a) Acts xv. 28.
"may again be reduced to that first perfection, than in "regard of stains and blemishes, sitheence growing, be held "for ever in extreme disgrace. To speak of this matter as "the cause requireth, would require very long discourse. "All I will presently say is this, whether it be for the find-"ing out of anything whereunto Divine Law bindeth us, "but yet in such sort that men are not thereof on all sides "resolved; or for the setting down of some uniform judg-

"ment to stand touching such things, as being neither way "matters of necessity, are notwithstanding offensive and "scandalous, when there is open opposition about them; be "it for the ending of strifes, touching matters of Christian "belief, wherein the one part may seem to have probable "cause of dissenting from the other; or be it concerning "matters of polity, order, and regiment in the Church, I "nothing doubt but that Christian men should much better "frame themselves to those heavenly precepts which our "Lord and Saviour with so great instancy gave (b), as con-

"cerning peace and unity, if we did all concur in desire to "have the use of ancient Councils again renewed, rather "than these proceedings continued, which either make all "contentions endless, or bring them to one only determina-

"tion, and that of all other the worst, which is by sword "(c).

It is manifest, however, that these Western Councils had become, at the time of the deposition of Frederic, mere in-

struments for extending the power and avenging the quarrels of the See of Rome.

CCCVIII. In some sense, too, it may be observed that the Universities of Europe have been considered the expositors of International Ecclesiastical Law. Philip III. of France invoked the aid of the University of Paris in his contest with Pope Boniface VIII., and compelled the members of that learned society to examine into the pretensions of the

(b) John xiv. 27.

(c) Hooker, Ecclesiastical Polity, b. i. ch. 10, § 14.
Pope; and it is remarked by Spittler (d) that a more dangerous enemy to the Papacy could not have been aroused, inasmuch as at that period Universities were indignant with the Pope, on account of the privileges which he had accorded to the Mendicant Orders, and which trenched upon the academical rights. The Universities were also resorted to by Henry VIII., at the suggestion of Cranmer, to obtain the much-desired divorce from his innocent wife; and after the lapse of nearly three centuries, by Mr. Pitt, in order to ascertain what the opinions of Roman Catholics were as to the alleged conflict between their allegiance to the Pope and to their temporal Sovereign, previously to the removal of their civil disabilities in England (e).

CCCIX. To return, however, to the task of tracing the continuous development of the claims of Papal authority over independent States.

The connexion between France and Rome, which, before the tenth century, had been so intimate, and which after that period, had been exchanged for the alliance of Germany, was again renewed after the quarrel with the race of Hohenstaufen.

Various Popes, as has been stated, had taken refuge in France since the reign of the Emperor Henry IV.; and at the time when Frederic II. was dethroned, St. Louis reigned in France. But the grandchild of St. Louis was by no means disposed to submit to the authority which the Popes had claimed in Germany.

Philip IV. (the Handsome) discovered the necessity of taxing his clergy as well as his laity, in order to defray the expenses of his wars with Edward I. of England.

The (f) Third (1179) and (g) Fourth (1215) Councils of Lateran had laid down the principle that the State had no authority whatever over the property of the Church.

(d) Geschichtle des Papsthums (1828), p. 172.
(e) Vide post.
(f) Can. 19.
(g) Can. 44.
Boniface VIII. sought to enforce this maxim against Philip IV. in a Decretal fulminated in 1296, which certainly begins with the assertion of a very unconciliating proposition: "Clericis Laicos infestos oppido tradit antiquitas, quod et præsenti experimenta temporum manifeste declarant, dum suis finibus non contenti nituntur in vetitum, ad illicita fraudes relaxant, nec prudenter attendunt, quam sit eis in Clericos Ecclesiasticasve personas et bona interdicta potestas" (h). It went on to declare that all secular authorities imposing, and all spiritual authorities paying, any taxes (it must be assumed, according to the defenders of the Decretals, to speak only of new taxes), without the authority of the Holy See, should incur excommunication ipso facto, from which they should not be relieved even in articulo mortis, without the special licence and authority of the Pope, "cum nostræ intentionis existat, tam horrendum secularium potestatum abusum nullatenus sub dissimulatìone transire."

CCCX. In A.D. 1304, Benedict XI., the gentle successor of the arrogant Boniface, by a Decretal beginning "Quod olim" (i), &c., took away the punishment from the clergy who payed new taxes, provided that they had first deliberated in Synod, and agreed that the tax was imposed on account of necessity, or for the general good; and even in that case the Pope was to be first consulted.

CCCXI. Boniface VIII., by the Bull "Ausculta Fili," further explained to Philip the Handsome that he and all other Kings were subject to the Pope, and set before him many of his offences, especially his debasing the coin of his realm, and finally advised him to make peace with the Church and prepare for an expedition to the Holy Land. The text of Scripture upon which the Pope chiefly relied was this passage in Jeremiah (i. 10.):—"See I have this day set thee over the nations, and over the kingdoms, to root out and to pull down, and to destroy, and to throw down,

(h) Sexti Decret. l. 3. t. 23, c. iii.
(i) Extravag. Comm. l. 3. t. xiii. De Immunitate Ecclesiæ.
“to build, and to plant.” The next step of Boniface was to call a Council at Rome, and, in 1302, to promulgate the famous Decretal beginning “Unam sanctam” (k), in which after setting forth various texts, one from the Canticles (l), one from the Psalms (m), and especially “Feed my sheep” from St. John’s Gospel, and observing, by the way, that if the Greeks or any other persons denied that they were under the care of St. Peter’s successor, it was clear that they were not Christ’s sheep, as there was but one shepherd and one sheepfold, the Pope proceeded with the following unqualified averment of the entire and unquestionable subjection of all temporal power to the See of Rome:—

“In hac ejusque potestate duos esse gladios, spiritualem videlicet et temporalem, Evangelicis dictis instruimur. Nam dicentibus Apostolis, Ecce gladii duo hic: in Ecclesia scilicet, cum Apostoli loquerentur, non respondit Dominus nimis esse, sed satis. Certe, qui in potestate Petri temporalem gladium esse negat, male verbum attendit Domini proferentis, Converte gladium tuum in vaginam (n). Uterque ergo est in potestate Ecclesiae, spiritualis scilicet gladius et materialis. Sed is quidem pro Ecclesia, ille vero ab Ecclesia exercendus. Ille Sacerdotis, is manu Eegum et militum, sed ad nutum et patientiam Sacerdotis. Oportet autem gladium esse sub gladio, et temporalem auctoritatem spirituali subjici potestate. Nam cum dicat Apostolus; Non est potestas nisi a Deo; quae autem sunt, a Deo ordinate sunt (o): non autem ordinate essent, nisi gladius esset sub gladio, et tanquam inferior reduceretur per alium in suprema.

(k) Extravag. Comm. I. I, t. viii. De Majoritate et Obedientia. “Unam sanctam Ecclesiam,” &c. (l) “My dove, my undefiled, is but one; she is the only one of her mother, she is the choice one of her that bare her.”—Cantic. vi. 9. (m) “Deliver my soul from the sword, and my darling from the power of the dog.”—Psalm xxii. 20. (n) St. Matthew xxvi. 52. (o) Romans xiii. 1.
"Porro subesse Romano Pontifici omni humanæ creature " declaramus, dicimus, definimus et pronunciamus omnino " esse de necessitate salutis. Dat. Laterani, Pontificatus " nostri Anno 8" (p).

CCCXII. As Benedict XI. had softened the "Clericis Laicos" of Boniface by the subsequent constitution " Quod olim," so the successor of Benedict, Clement V., being still more devoted to France, hastened to take off the edge of "Unam sanctam" by the Bull "Meruit" (1306) (q), which declared that "Unam sanctam" did not subject France more to Rome than it had been subjected before; that no prejudice to royal or national rights was intended, and that all the relations of France to Rome should be considered "in eodem " esse statu quo erant ante definitionem præfaturam."

CCCXIII. In 1311, Clement V., in the Bull which begins "Romani Principes" (r), and which is inserted among the Clementine Constitutions in the Corpus Juris Canonici, declares, in the most express terms, that the examination and approbation of the fitness of the electors' choice, as well as the coronation of the Emperor at Rome, belongs "eodem Ecclesiae, qua a Græcis imperium transtulit in Germanos;" also, that the oath taken by the Emperor was not merely one which bound him to

(p) This Decretal, too, actually finds a modern champion in Philipps, who observes that "its object was to develop dogmatically, upon general principles, the relation between Church and State" (pp. 25, 26); that it contained nothing new, but a recapitulation of maxims enunciated by former Popes and Fathers of the Church (pp. 238-250); that it contained merely a logical conclusion from undoubted premises (pp. 250, 260).—B. iii. Kirchenrecht.

Walters, however, mentions it with sorrow and shame.—Kirchenrecht, s. 41.

Packmann considers it as dogmatical only, but does not defend it.—Kirchenrecht, i. 169, note.

(q) Extrav. Comm. l. 5, t. 7, c. ii.: "Meruit clarissimi Filii nostri Philippi, Regis Francorum illustris, sincere affectionis ad nos et Ecclesiam Romanam integritas," &c.—enough to have roused Boniface from the grave.

(r) Clement. l. ii. t. ix. De Jurejurando.
PAPAL CLAIMS—EXTRAVAG. “PASTORALIS.” 363

... protect and defend the Pope, as the Emperor Henry VII. at this time contended, and which contention, “si sub dissimulatione pertranseat, vel silentio pallietur, posset in "magnum et evidens praedium Rom. Ecclesie redundare;" and therefore the Pope decreed, in plain terms, that the oath was one of feudal allegiance and feudal vassalage, like that of the King of Naples, “cum ipsi Reges ejusdem Ecclesie specialissimi filii, sibi juramento fidelitatis, et "alias multipliciter essent adstricti," and that by it he was bound to extirpate all heretics and schismatics, never to enter into any relation or confederation with any one "communionem Catholicæ fidei non habente, aut cum aliquo "alio præfatae Ecclesie inimico, vel rebelli, seu eidem manifeste suspecto;" and to maintain the whole property and jurisdiction of the Roman Church intact and secure, and to abstain from injuring any vassal belonging to it.

CCCXIV. The same Pope followed up this decree by another, beginning “Pastoralis” (s), in which, annulling the procedure—a very unjust one, it must be admitted—of Henry against Robert, King of Naples, his Holiness expresses his unlimited and illimitable authority over all kingdoms as follows: “Nos tam ex superioritate, quam ad "imperium non est dubium nos habere, quam ex potestate, "in qua (vacante imperio) imperatori succedimus: et nihilominus ex illius plenitudine potestatis, quam Christus, rex "regum et dominus dominantium nobis, licet immeritis, in "persona beati Petri concessit, sententiam et processus omnes "praedictos, et quidquid ex eis secutum est, vel occasione "ipsorum, de fratrum nostrorum consilio declaramus fuisse "ac esse omnino irritos et inanes, nullumque debere aut "debuisse sortiri effectum.”

CCCXV. After Henry’s death, which happened shortly afterwards, John XXII., the successor of Clement, issued (1316) a Bull beginning “Si Fratrum” (t), and duly

(s) Clement. i. ii. t. xi. c. 2. De Sententia et re judicata.
(t) Extravag. Joan. XXII. t. v. Ne sede vacante aliquid innovetur.
inserted in the Extravagantes of the Corpus Juris Canonici, wherein he asserted respecting the government of the empire, "cum in illo ad secularem judicem nequeat haberi recursus, "ad summum Pontificem, cui in persona beati Petri terreni "simul et caelestis Imperii jura Deus ipse commisit;" therefore all persons pretending to any authority not conferred by the Pope were excommunicated, all their acts and contracts made void, and all who obeyed them were subjected to the like punishment.

CCCXVI. The Extravagant De Consuetudine (n) of John XXII., at Avignon, in A.D. 1322, appears to crown the pillar of Papal pretensions, while it bears directly upon a most important point of International Law. It begins by the assertion that the Pope is placed by God over all kingdoms and nations; it represents that the Pope cannot personally perambulate all countries, therefore he must have lieutenants or legates to supply his place and exercise his power over the people committed to him; that some nations have said that legates could not be sent to them against their will, that they have a customary right to reject them; that there is, however, no such right, but that the attempt to exercise it draws down immediate excommunication upon the whole country.

The words of the Bull should be carefully studied.

"Super gentes et regna Romanus Pontifex a Domino "constitutus," &c.

"Qui vero de cætero super prædictis dictos Legatos, aut "etiam Nuntios, quos ad quasque partes pro causis qui- "buslibet sedes ipsa transmiserit, præsumperint impedire, "ipso facto sententiam excommunicationis incurrant. Regna, "terrae et loca quaelibet subjecta eisdem, tamdiu sint eo ipso "Ecclesiastico supposita interdicto, quamdiu in hujusmodi "contumacia duxerint persistentudum. Non obstantibus qui- "buslibet indulgentiis, aut privilegiis, Imperatoribus ac Re- "gibus, seu quibusunque modis, tenoribus et formis a sede

(n) Extravag. Comm. 1. i. t. i. c. 1.
"ipsa concessis, quæ contra præmissa nullis volumus suffragi."

CCCXVII. The authority shown, from the foregoing extracts of the Canon Law, to have been claimed and exercised by the Popes, has long ago been pronounced by the voice of International and Public Law to be altogether irreconcilable with the peace and independence of nations.

Nevertheless it is important, and especially at the present time, to show what claims have been made, what authority has been exercised, by the Roman See. For this authority has never been distinctly repudiated by the successors of the Popes who actually exercised it; it still forms a part of the body of Canon Law, taught as the jurisprudence of the Roman Church, however rejected by national Churches of that communion. Two hundred years and more after these edicts were promulgated, able advocates were found to defend, under the sanction and patronage of the Roman See, the literal meaning and the full extent of their provisions.

In the year 1729 the Neapolitan Government interfered, by royal edict, to prevent a service being celebrated in honour of Gregory VII. (Hildebrand), in which his deposition of the Emperor Henry IV. was commemorated and extolled as a lawful exercise of Papal power (x). At this day, even in France, men of no mean ability are found to maintain that these decrees admit of a merely spiritual and a perfectly defensible interpretation. Some writers are found to admit that they can only receive a temporal interpretation, but that they are, nevertheless, perfectly justifiable (y).

(x) Vide post.
(y) "When, then, we find a sovereign Pontiff judging, condemning, and deposing a secular Prince, releasing his subjects from their obligation to obey him, and authorizing them to choose them another King, we may regret the necessity for such extreme measures on the part of the Pontiff, but we see in them only the bold and decided exercise of the legitimate authority of the spiritual power over the temporal; and instead of blush ing for the chief of our religion, or joining our voice to swell the clamour against him, we thank him with our whole heart for his fidelity to Christ, and we give him the highest honour that we can give to a true servant of God.
When the great Portuguese canonist, Barbosa, in the early part of the seventeenth century, endeavoured to show that the "Unam sanctam," &c., had only a spiritual signification, he was obliged to confess that he was combating the contrary opinion of almost every expositor of the Canon Law (z).

Nor, indeed, is the controversy of much consequence, for the same author admits that, though the Pope has no direct power in temporal matters, yet he has it "casualiter et indirecta in ordine ad spiritualia quoties scilicet ad spirituale forum fuerit necessaria;" and he consistently maintains (a) that the deposition of the German Emperors, the transference of their kingdoms to others, the abrogation of civil laws in any way adverse to spiritual good, the donation of infidel countries to Portugal and Spain, were perfectly legitimate

and benefactor of mankind. It is not the sainted Hildebrand, nor the much-wronged Boniface, that we feel deserves our apology or our indignation, but Henry of Germany and Philip the Fair of France."—Daily Telegraph Newspaper, October 1853.

(z) "Nec etiam nos deterrent pleraque jura, quae juxta omnium fere Doctorum mentem, summo Pontifici tribuere videntur secularem potestatem, ut in cap. i. distinctio 22, et in Extravag. Unam sanctam," &c.—De Off. et pot. Episcopi, p. 110, t. iii. c. 2.

"I n'est pas vrai que les Papes aient jamais prétendu la toute-puissance temporelle."—De Maistre, Du Pope, c. viii. Walter, however, says, with praiseworthy love of truth, "Geistlose Schriftsteller, wie sie auch andere Höfe erzeugen, gründeten, gefällig gegen die herrschenden Umstände, Forderungen und Systeme auf das, was aus freier Huldigung hervorgegangen, nur durch Weisheit und Mäßigung erhalten werden konnte. Die Päpste erlangten vom Kaiser einen wahren Lehnsed, von der weltlichen Gewalt die unbedingte Unterwürfigkeit unter die Geistliche. Da wanderten sich die Fürsten und Völker von ihnen ab," n.s.w.—Kirchenrecht, Abschn. 41.

Sir George Bowyer also admits that the Decretals, as well as the other works composing the Corpus Juris Canonici, contain passages, decisions, and principles tending to establish the authority of the Popes over the temporal civil rights of Kings and States—a doctrine contrary to the public law of Europe, and, indeed not maintained by the Roman Church; though it has been asserted by individual doctors."—13th Reading, p. 164.

It is much in the same spirit that modern Ultramontane writers (c) write and act at the present time. These Decretals, it must be remembered, were enacted by an authority which a large and a most devoted portion of Romanists hold to be infallible. They are taught in books, ancient, mediæval, and modern, dedicated to Popes, and published under Papal sanction. They are defended at this day by various learned writers and commentators as having a spiritual character only; by others as being a proper exertion of authority at the time. The question arises, have they ever been repudiated by the authority which enacted them?—are the teachers of Canon Law at Rome ordered to declare that they are obsolete, and that they were or are contrary to the rights of nations?—are there any editions, published by authority, in which these passages are omitted, explained, or censured?—have they ever, like the bad laws of civil States, been repealed? Till these questions can be answered in the affirmative, the Governors of States, who see the present state of revived Ultramontanism, must superintend with vigilance and jealousy the promulgation of the Canon Law in their dominions.

It has been also said, both by the infidel philosopher and by the Ultramontane divine (d), that this authority, at the time of its promulgation and exercise, was eminently beneficial to the world; that the spectacle of princes and nations submitting their quarrels to the arbitration of the chief minister of the Gospel of Peace, was one which the bloody wars of later times have given Christendom good reason to regret; that a perfect tribunal of International Law was

(b) C. 2, passim. De primatu Ecclesie Romanae super omnes, et de Suprema summi Pontif. potestate in universum orbem. The work is dedicated to Urban VIII. (1623).

(c) Packmann, 133.

(d) De Maistre, 249, citing Voltaire.

"Quando Gregorio bandiva l'anatema contro gli' infami fautori della tratta dei Negri, chi non vede che la coscienza cosmopolitica del summo sacerdozio gli animava il petto e la lingua?"—Gioberti, Della Riform. Cattol. Frammenti, lxiii. p. 110; see too p. 118.
established in the Vatican, and the only common judge, which independent nations could acknowledge, was presented in the person of the Pope. Nor can it be denied that this authority often protected the oppressed, humbled the oppressor, stayed the shedding of blood, cherished peace, and prevented war, at a period when the barbarous manners and savage passions of men would have yielded to no other influence (e). "It is impossible," says a late very learned and accomplished dignitary of the English Church, "to conceive what had been the confusion, the lawlessness (f), the chaotic state of the Middle Ages without the mediæval "Papacy." Nevertheless, experience and history demonstrate that this authority was one which no mortal hands were made to wield. Had the practice corresponded with the theory of this great tribunal, it is conceivable that the foundation of its manifestly beneficial authority might never have been scrutinised. But for such a tribunal, the most perfect disinterestedness, the most entire freedom from the suspicion of ambition, personal and pontifical, the most unsotted character, the most innocent unworlly life, the most ardent love of justice, the most fearless disregard of persons, were indispensably and perpetually requisite. It was not enough that some of these qualities should be possessed, or that some Pontiffs should possess them, there must be a security that none but those who possessed them should ever be placed upon the judgment-seat of the world. But

(e) "Ils exercèrent une dictature salutaire, qui laissa respirer les peuples, et prépara la renaissance de l'ordre social. Mais les exemples qui seraient tirés d'un état de choses essentiellement transitoire, ne sauraient légitimer des prétentions inconciliables avec le but et la nature des sociétés civiles, le véritable esprit de l'Eglise et sa mission divine."—Discours, &c., par F. Portalis, Introd. vi. Paris, 1845.

De Maistre, 203, 204, 265.

(f) Milman's History of Latin Christianity, vol. i. p. 430; "and (he adds) of the mediæval Papacy, the real father is Gregory the Great." But this is perhaps rather too broadly stated; at least, it should be remembered that he strongly protested against the virtual absorption of all the Episcopates into one. His Papacy extended from 590 to 604 A.D.
an Italian Sovereign, mixed up with the quarrels of his neighbours, seeking the aggrandisement of his own territories, relying for his claim upon forged credentials, founding his authority upon false decretals, at one time the instrument of the ambition of Germany, at another of France, residing at Avignon, contending with a rival Pope at Rome who possessed apparently equal credentials, fighting like Julius II., infamous beyond expression like Borgia, worldly and luxurious like Leo, and in much later times refusing to recognise, as in the case of Prussia and Spain, the Sovereigns chosen by the constitutional law of independent kingdoms, such a Sovereign was palpably unfit to be the unappellable dispenser of International Law. It became evident that the unquestionable virtues, the sanctity of morals, the great abilities of many Pontiffs, could not cure the inherent defects in the tribunal itself.

Then came the time when the credentials of this superhuman authority were demanded and investigated. A few isolated, if not distorted, texts of Scripture were not sufficient to counteract the silence, much less the contrary practice of primitive antiquity; and the modern theory of development, so much used in our days, for different purposes, both by the Infidel and the Ultramontanist, was not yet developed.

CCCXVIII. That there should be some authoritative repudiation of the portions of the Canon Law which we have been considering, appears the more necessary, when it is remembered that, as late as the year 1773, some of the most extravagant claims of the Papacy were formally promulgated in the Bull which is entitled *In Cœna Domini*, and is also known as *Pastoralis*, and which at one time greatly disturbed the peace of Europe.

CCCXIX. The Bull (*g*) called *In Cœna Domini* was published at Rome every Holy Thursday.

*(g)* Fleury, *Hist. eccl.* t. xxxiv. l. 109, s. 22.
*D. de Maillan*, i. pp. 376, 377. This author, writing in 1770, mentions the Bull as being annually published—"qu'on publie aujourd'hui."
It is a maxim of Ultramontane canonists, at variance with the general doctrine of the Civil and Canon Law, that what is published at Rome is published all over the world, consequently *ignorantia juris neminem excusat*.

The Ultramontane canonists say that the Bull is so ancient that its origin cannot be discovered. It appears that there is a copy in the Vatican of the Bull of Gregory XI. (A.D. 1370), and the date of this famous instrument cannot be traced further back. The Bull does not relate to *dogmas*, but to *discipline*, and therefore even some Ultramontane canonists admit that it does not bind the conscience in countries where it has not been received. If so, it would bind only the consciences of the subjects of the Pope, for it appears to have been refused admittance by the Governments of every independent State.

In France (*h*), *M. Pithou* made its rejection the subject of a particular article (*i*) of the liberties of the Gallican Church. But in the province of Roussillon the Bull appears to have been formally published, till the 21st March, 1763, when by an *arrêt du conseil souverain*, it was suppressed, and prohibited for the future. Indeed the Parliaments of France were so stout in their opposition to the introduction of this Bull, that on an occasion when their suspicions were aroused that certain persons intended to introduce it into the kingdom, they confiscated the temporalities of certain bishops, and treated as State criminals those who

---

*Reiffenstuel, Jus Canon. Univ.* v. c. 5.
*Giannone, Ist. di Napoli*, l. 33, cc. 3, 4, 5, 6.
Bull *In Cena Domini*, promulgated by Pius V.; forbidden by Philip; evaded by Venice.

(*h*) Papers laid before Parliament (*vide post*), 1816-17, pp. 178, 179.
*Requisition of the Attorney-General Seguier.*

(*i*) Art. 17.
obeyed them: for the French thought that though the Bull was injurious to all Sovereigns, it was especially detrimental to the prerogatives of the French crown and the liberties of the French Church.

CCCXX. The preamble of this famous Bull (k) opens with the obligation of the Roman Pontiff to preserve the Catholic faith in its integrity. The provisions which follow are the following:—

1. It excommunicates and anathematises heretics of whatever sect, and their abettors, as well as those who read and print their books, and, lastly, schismatics.

2. Also all persons and universities which appeal to a future council.

3. Also pirates, corsairs, and maritime freebooters.

4. Also those who seize the chattels of shipwrecked parties in whatever region.

These two last provisions are curiously illustrative of the Pope's claim to be supreme International Judge, which has been already commented upon (l).

5. Also those who impose new tolls or augment old ones, without the licence of the Pope.

6. Also those who forge Apostolic letters and petitions, as well as those who utter forged letters.


A Letter to Mr. Plumptre on The Bull In Coena Domini, by the Earl of Arundel and Surrey. (Dolman, London, 1848.)

A Letter to the Earl of Arundel and Surrey on the Bull In Coena Domini. (Hatchard, London, 1848.)

Report from the Select Committee (1817), p. 123, &c.

In the pamphlet above referred to ("The Bull In Coena Domini") will be found cited, as authorities for the text of the Bull, the following works:—


Id. op. Cocquelines, xiv. Rome, 1739-44.


Bullariorum continuatio, viii. 1835-44.

(l) Vide ante, vol. i. pref. p. xlvi
7. Also those who supply the Saracens or Turks, or other enemies of the Christian name, with arms or aid (m).

A provision which would have operated very inconveniently for Roman Catholic, as well as Heretic States during the Crimean War, (n), unless, indeed, the fact of the Turks being aided against the schismatic might be considered a casus omissus in the Bull.

8. Also those who obstruct the conveyance of victuals and other supplies for the use of the Curia Romana.

9. Also those who persecute persons coming to the Roman See, or sojourning at the Roman Court.

10. Also those who in any way molest pilgrims coming to Rome for purposes of devotion.

11. Also those who injure the Cardinals of the Holy Roman Church, or other ecclesiastical dignitaries.

12. Also those who injure persons having recourse to the Roman Court in matters of business, and also pleaders of causes.

13. Also those who appeal to the Secular Power against the execution of the Letter Apostolic.

14. Also those who remove causes touching spiritual matters from the delegates of the Apostolic See, and other ecclesiastical judges, or who obstruct the proceedings of the said judges.

15. Also secular judges, who bring before their tribunals ecclesiastical persons, or who publish or execute ordinances and pragmatics prejudicial to the ecclesiastical liberty.

16. Also those who obstruct prelates and ecclesiastical judges in the exercise of their jurisdiction; those who have recourse to the secular as a protection against the ecclesiastical courts, and those who aid and abet them.

17. Also those who usurp and sequester the revenues of properties belonging to the Holy See and to the Church.

18. Also those who exact contributions from ecclesiastical persons and goods, and their aiders and abettors.

(m) Vide ante, vol. i. pref. p. xlvii.

(n) A.D. 1854.
19. Also secular judges who interfere in criminal causes against ecclesiastical persons.

20. Also those who occupy the city of Rome, and other cities, provinces, and places belonging to the Roman Church, and who usurp her jurisdiction.

In this category are included, among other territories, the kingdom of Sicily, the islands of Sardinia and Corsica.

21. Decrees that this Bull shall continue in force until another similar process be issued by the Pope for the time being, and that no one shall obtain absolution from the sentences of this Bull from any other than the Pope, unless he be *in articulo mortis*, and then only after surety given for obedience to the mandates of the Church, and for satisfaction to be made.

Another article provides that the affixing of this Bull to the door of St. Peter's and St. John of Lateran, shall have the effect of a personal service upon everybody.

CCCXXI. There has been much dispute whether this Bull be now in force, or whether it requires an annual publication for that purpose. The English Roman Catholics maintain that it is obsolete (*o*), and requires a promulgation to revive it; though those provisions in it which were to be found in other Bulls, of which, indeed, it is a compilation, are still binding.

The language of canonists, and especially of Reiffenstuel (*p*), would seem to warrant a contrary conclusion. Practically speaking, it is, no doubt, dormant for the present. It will be presently seen what a general resistance from all independent States the last attempt to promulgate it excited.

If no such direct attempt at the subordination of all civil authority to the decrees of the Roman *curia* has been since made, the same principle, more discreetly veiled perhaps, has animated modern Papal Encyclics and provoked the resistance of modern Governments.

---

*(o) Letter of Lord Arundel, p. 4.

*(p) Ibid. p. 6.*
In 1829, the Minister of Ecclesiastical Affairs in France, at that time under the rule of Charles X., issued a circular to the French bishops, in which he said: "As for the Encyclical, which may have come to your knowledge, the Pope not having demanded, and the king not having accorded, permission to publish it, it cannot be printed in the instructions which you may deem it your duty to address to the faithful of your diocese on the occasion of the jubilee, nor published in any other form (q)."

The introduction into France of the Encyclical Quanta Cura, and its Appendix, called the Syllabus, in 1865, produced a circular from the Minister of Justice to the French bishops, (Jan. 1. 1865), in which he said: "As regards the first part of the Letter and the Appendix, your Eminence will understand that the reception and publication of these documents, which contain propositions contrary to the principles on which is founded the constitution of the Empire, could not be authorised."(r)

With respect to the Vatican Council in 1870, France and other States were careful to announce that the decrees of it could only be enforced when in accordance with the civil or municipal law.

The Syllabus and the Vatican Council are more fully referred to hereafter.

(r) See also the decree in the Moniteur of January 5, 1865.—Ann. Reg. 1865, p. 190.
CHAPTER V.


CCCXXII. Thus, at the close of the thirteenth century, the Papal power had reached its utmost height. It had carried to the extremest practical verge the logical consequences of the principles laid down in the Bulls which have been mentioned (a).

The kingdoms of the earth were at the disposal and under the supremacy of the servant of the servants of God.

About the beginning of the fourteenth century, the flagrant abuse of Pontifical authority began to cause its rapidly accelerating downfall (b).

Philip IV. of France burnt the Bull of Boniface VIII. which invaded the Regalia of the French crown (c), defied

(a) Discours, Rapports, et Travaux inédits sur le Concordat de 1801, etc., par J. E. M. Portalis, publiés et précédés d'une Introduction, par le Vicomte Frédéric Portalis. Paris, 1845.

(b) Shakspeare has admirably painted the spirit of these times in the answer to Pandulph, which he puts into the mouth of the Dauphin Lewis:—

"Your Grace shall pardon me. I will not back; I am too high-born to be protorted, To be a secondary at control, Or useful serving-man, and instrument To any sovereign State throughout the world," &c.

King John, act v. sc. 2.

(c) A.D. 1302.

1 Koch, 224.
his excommunication, and appealed to a General Council (d). The contumacy and cruelty of Clement VI. towards the Emperor Louis of Bavaria roused the Princes and States of the Empire, and produced the celebrated decree of the Diet of Frankfort, A.D. 1338 (e). In this decree, which became a Fundamental Law of the Empire, it was declared that the Imperial Dignity was derived from God alone, and that the Emperor, once chosen by a plurality of the suffrage of the electors, needed no confirmation or coronation of the Pope, and that to maintain the contrary should be considered a crime of high treason (f).

CCCXXIII. Another event greatly injured the Papal authority. Clement V., who had been Archbishop of Bordeaux, was crowned at Lyons, and took up his abode at Avignon, (g) A.D. 1305, and there his successors continued till A.D. 1378 (h).

The Pope was accused, not without reason after abetting the persecution of the Templars, of being the tool of the French Kings.

If the State during the preceding century had dwelt in the house of the Roman Church, the host and guest had certainly changed places (i).

Towards the end of the fourteenth century, Schism tore the Papacy in pieces. Christendom was divided between Popes contemporaneously chosen at Avignon and at Rome; at one time a third Pope was chosen at Pisa (k), so that three

(d) 1 Koch, 225.
(e) Raynaldus, A.D. 1340, n. 7.
(g) See the instrument of sale by which Joanna, Queen of Sicily, transferred Avignon to Clement VI., A.D. 1358. 1 Schmauss, C. J. A. 50.
(h) In 1376 Gregory XI. returned to Rome. Then, as the Italians said, the seventy years of the Babylonish Captivity ceased.—3 Phillipps, 331.
(i) The history of the Papal residence at Avignon was not lost upon Napoleon. He was well aware of the advantages which the Pope's residence in France gave to its monarch, and had at one time determined to revive the French Poppedom. Vide post.
(k) A.D. 1400.
Pontiffs claimed at one and the same time the undivided spiritual allegiance of Christendom. The Avignon and Roman Schism lasted from A.D. 1398 to A.D. 1417.

The Ecclesiastical Council of Constance (A.D. 1414) deposed the Popes of Avignon, and procured the resignation of the Popes of Rome, and at its fifth session declared the superiority of the authority of an Universal Council to the Pope; nevertheless, it was thought indecent to take further proceedings while no visible chief of the Ecclesiastical State existed. At Colonna, Marten V. was elected, and prepared his own scheme of reform; but this was not agreeable to the clergy of England, France, Germany, Italy, and Spain, who were assembled at Constance. The Council of Basle was therefore convened, at which Annates and various Papal exactions were abolished, and the liberty of appeals to Rome greatly circumscribed (l). Eugenius IV., the successor of Marten, dissolved the Council twice, once under the allegation of opening a communication with the Greek Church (m). Another Schism happened; another Pope (Felix V.) was chosen by the prelates who remained at Basle. He subsequently resigned, and at last, about A.D. 1449, the Council discontinued its sittings, and the Popes since this period have been resident, except during the captivity in France of Pius VI. and VII., at Rome (n).

CCCXXIV. The question now arises, how were the International relations of independent States with the Roman See affected by these great and significant events?

The time had fully arrived when neither—to use the ex-

(l) Bossuet, Declaratio Cleri Gallicani, l. v. cc. 4, 5.
1 Koch, 230.

(m) A temporary act of union of the Roman and Greek Churches appears to have been signed at Florence, A.D. 1439, but it was speedily dissolved.—ib. 231.

(n) The Councils of Constance and Basle were called Reformatory, and modern writers who are vehement upholders of the Papal pretensions admit that the views of the Popes, and especially the flagrant abuse of spiritual censures, called aloud for reformation.—Phillipps, Kirchenrecht, iii. p. 325.
pression of modern canonists—the hierocratic nor the territorial system could exclusively prevail, when the Church was to be considered as standing by the side, as it were, of the State, subject to it in all temporal matters whatever, but not incorporated in the State, as in the days of Constantine, Justinian, and Charlemagne, or altogether absorbing the State, as in the days of the Gregories and Innocents. It is no longer necessary, for the explication of this difficult subject, to record minutely the changes of dynasties and the vicissitudes of national fortunes.

The age of Pragmatics, of Pragmatic Sanctions, and of Concordats had begun; the very meaning of the latter term, it must be observed, bears testimony to the historical facts stated above; we learn from it that the relation subsisting between the spiritual chief at Rome and the Governments of other nations had become that of an alliance regulated by treaty between two independent States. Nevertheless there is this distinction to be borne in mind, viz., that a third party, the National Church, and especially the Clergy, are parties interested (indeed principally interested), as well as the Government and the Roman See, in whose names a treaty is contracted (o).

The Concordata between the Roman See and Independent States proceed upon two presumptions:—

First,—That there are certain rights and privileges inherent in Sovereigns with respect to the Church established in their realms.

Secondly,—That there is in independent kingdoms, whatever relations it may bear to Rome as the centre of unity, a national Church—the two principles which the Pragmatic Sanctions had already on the part of the nation declared to be essential to the independence of the State.

CCCXXV. The International relations of Rome with other nations cannot be understood without an examination

(o) De Pradt, i. 280.
of these instruments \((p)\); from them not only the expression of Pontifical and National will may be best collected, but *usage*, the great expounder of International Law, may be most clearly ascertained.

As the era of the Reformation, and the Treaty of Vienna (1815), have greatly affected this branch of the Law, it will be convenient to divide the consideration of this subject into three epochs:—

1. The period preceding the Reformation.
2. The period intervening between it and the Treaty of Vienna.
3. The period subsequent to this Treaty.

CCCXXVI. 1. As to the period before the Reformation. The history of the intercourse of the secular Government and of the national Church of France with the Pope is perhaps that which best illustrates the International relations between independent States and Rome during this period. Into this discussion the most remarkable circumstances of these peculiar relations in the history of other nations, during the same period, may be easily interwoven; though, as to the period which has elapsed since the Reformation, they will require a separate and more specific narration.

CCCXXVII. A *Pragmatic* \((q)\) is an imperial constitu-

\((p)\) *Eichhorn* follows *Sauter* in pronouncing his opinion that, inasmuch as all *concordata* are founded upon the principle of the weal of the Church, they are only binding so long as they attain that end, and cannot therefore be ranked either among private or international contracts.—*Eichhorn, Kirchenrecht*, I., B. iii. Absch. i. c. 5. pp. 578, 579.


"Parmi nous l'usage a donné ce nom aux grandes ordonnances qui concernent les grandes affaires de l'Eglise, ou de l'Etat, ou, au moins, les affaires de quelques communautés."—*Durande de Maillane, Dict. du Jur. can., voce Pragmatique Sanction*.

*Lucange, Glossa., voce Pragma.* Πράγμα is, of course, its origin.
tion, framed, after inquiry and deliberation, upon a matter of State importance, with the consent of the chiefs and the approbation of the Sovereign of the country (r).

The Pragmatic which is of the earliest International importance, with reference to the present branch of our subject, is that of Saint Louis. It was promulgated in 1268, by that monarch of France whom the Church of Rome has especially delighted to honour. It is extremely simple, short, and pertinent, and a most valuable historical monument upon this branch of International Law.

CCCXXVIII. "Ludovicus, Dei Gratia Francorum Rex, ad perpetuam rei memoriam. Pro salubri et tranquillo statu Ecclesiae regni nostri, necnon pro divini cultus augemento, et Christi fidelium animarum salute, utque gratiam et auxilium omnipotentis Dei (cujus solius ditioni ac protectioni regnum nostrum semper subjectum extitit, et nunc esse volumus,) consequi valeamus, quæ sequuntur hoc dicto consultissimo, in perpetuum valituro, statuimus et ordinamus.

"I. Primo ut Ecclesiarum regni nostri prælati, patroni, et beneficiorum collatores ordinarii jus suum plenarium habeant, et unicuique sua juridictio servetur.

"II. Item, Ecclesiae cathedrales, et aliae regni nostri liberas electiones, et earum effectum integraliter habeant.

"III. Item simoniae crimen pestiferum Ecclesiam labefactans a regno nostro penitus eliminandum volumus et jubemus.

"IV. Item promotiones, collationes, provisiones et dispositiones prælaturarum, dignitatum, et aliorum quorumque beneficiorum et officiorum ecclesiasticorum regni nostri, secundum dispositionem, ordinationem, et determinationem "Juris Communis, sacrorum Conciliorum Ecclesiae Dei,

(r) The Roman Emperors published Pragmatic Rescripts in the time of St. Augustine, as did the first and second races of French monarchs.—De Pradt, i. 198.
"atque institutorum antiquorum sanctorum patrum fieri "volumus et ordinamus.

"V. Item exactiones et onera gravissima pecuniarum per "curiam Romanam Ecclesiae regni nostri imposita, quibus "regnum nostrum miserabiliter depauperatum extitit, sive "etiam imponendas, vel imponenda, levari aut colligi nulla-"tenus volumus, nisi duntaxat pro rationabili, pia et urgen-"tissima causa, vel inevitabili necessitate, ac de spontaneo et "expresso consensu nostro et ipsius Ecclesiae regni nostri.

"VI. Item libertates, franchisias, immunitates, prærogâ-"tivas, jura et privilegia per inclyta recordationis Francorum "reges prædecessores nostros, et successive per nos, Ecclesiis, "monasteriis, atque locis piis religiosis, nec non personis ec-"clesiasticis regni nostri concessas et concessa landamus, "approbamus et confirmamus per presentes.

"Datum Parisiis, anno Domini 1258, mense Martio" (s).

Here, then, we have a French King and a French Church with rights and privileges which have been grievously injured and which are to be for the future protected against the invasion of the Curia Romana. These articles are the Magna Charta of the liberties of the Gallican Church. Bossuet said that in them were contained the celebrated four propositions, which will presently be mentioned.

CCCXXIX. The next national declaration of importance, on behalf of the State and Church of France, was made after the close of the great Schism of the Western Church, and after the Councils of Constance and Basle had endeavoured to apply remedies to the frightful disasters of the Ecclesiastical State. The two Estates were assembled at Bourges by Charles VII., and unanimously accepted, with certain modifications, the decrees of the Council of Basle (t). The resolutions of the French Council were made by royal ordonnance part of the law of the nation, and duly registered

(t) Durande de Maillane, ubi supra.
De Pradt, i. c. ix.
in the Parliament, 13th July, 1439. Pope Eugenius protested against them in vain. Pius II. renewed the complaint after the death of Charles VII. (1461). Louis XI. yielded to his urgent solicitations, and issued Letters Patent for their abolition; but the Parliament refused to register them, and made one of those celebrated remonstrances which will always keep their place in the history of France.

Paul II. pressed Louis XI. for stronger measures. The University of Paris declared to the Legate that it would appeal to a future Council against any invasion of the Pragmatic. Louis, however (u), was bent upon making peace with the Pope, and made a treaty, in 1472, with Sextus IV., which reduced the Pragmatic, as to beneficiary matters, to the same position as the German Concordata. But the Parliament refused to register the treaty.

Louis XI. died in 1483; his successor, Charles VIII., plunged into Italian wars and politics, and was little disposed to aid the Pope. This monarch assembled the three Estates at Tours. Innocent VIII. and Alexander VI. attacked Charles in vain, and after his death (1497) they found in Louis XII. a yet more obstinate adversary. Julius II. put France under an interdict, and excommunicated the King; but Louis XII., fortified by the universal sympathy of his subjects and the alliance of the Emperor Maximilian, ordained that the Pragmatic of Bourges should be observed throughout France, and convened, in 1499, his clergy at Tours. Before this assembly he laid the dispute between himself and the Pope, and sought their advice upon certain questions (x) proposed to them. The French clergy agreed that their King had full power to protect his subjects from all oppression, that it was lawful for him to deprive the Pope of fortified places used as means of annoyance to his neighbours, to withhold obedience, so far as was necessary to his

(u) See De Præt., i. p. 232, &c., for the motives of Louis: among them was the hope of obtaining Naples.

(x) They appear to have been eight in number,
safety, from the Pope, and during the interval of suspended obedience to conform to the ancient discipline of the Church. That what he did for himself he might also do on behalf of his allies; that the Papal excommunications issued upon temporal matters, and without legal form, were altogether null. The chief of the clergy requested permission to lay these resolutions before the Pope, and to call upon him to put an end to a scandalous war, and convene a General Council. And they besought the King, if the Pope should fail to heed their request, to join with the Emperor and those cardinals and foreign ecclesiastical dignitaries who stood aloof from Rome, to adopt the precedents of Pisa, Basle, and Constance, and convene a General Council without the Pope. Finally, they determined to meet again at Lyons, and await the reply of the Roman See, and in the meanwhile they forbad all communication with Rome, especially in the shape of pecuniary contributions. Maximilian promised the hearty concurrence of himself and his clergy at the forthcoming Council of Lyons (y).

CCCXXX. In the midst of these significant preparations Louis XII. died. In the year 1514, France had a new Sovereign, and, the fruit of his exigencies, a new Ecclesiastical Law.

Francis I. found himself in a very embarrassing position (z). Eager for Italian conquests, he had already vanquished some of his opponents, when he received at Pavia the intelligence that Leo X. (1516) had issued a peremptory citation against the Crown, the Church, the Parliament, and the universities of France, to show cause why the Pragmatic should not be abolished. Its condemnation was certain before the trial. Rash, ill-judging, ill-advised, scared by the probable consequences of an excommunication and interdict by Pope

(y) Maximilian, it should seem, like one of his predecessors, had some idea of making himself Pope, and the Papacy hereditary.—1 De Pradt, pp. 238, 239, note.

and Council, and by the league of enemies stirred up against him by the Pope, Francis repaired to Bologna, and there, with the manner and in the language of humiliation, signed a Concordat with Leo, abrogating the Pragmatic (1516), and undertook to procure its registration in Parliament (a). Long and sturdily did the Parliament refuse to register a treaty which they openly and courageously avowed to be contrary to the liberties of the kingdom and the Church (b).

The Crown had entreated, the Chancellor addressed them in vain, when the Grand Chamberlain, De la Tremouille, spoke to them (c) in a style which overcame the obstacle; he assured them, inter alia, that the honour of the Crown was at stake, and added the most violent threats of compulsory registration of the Concordat. The Parliament finally, having rejected the Papal Bulls against the Pragmatic, registered the Concordat, protesting against the violence used towards them, and appealing to a better-advised Pope and a future General Council.

The University of Paris made a similar appeal, and the King was besought by the Doyen de l'Église de Paris, in the name of the Chapter, to assemble the French Church. The execution of the Concordat, the object of universal disgust, and condemned by the nation and the Church, became a matter of extreme difficulty (d). The Pope

(a) "Tempori utique inserviendum esse duximus, ac rebus nostris periclitantibus pro re nata consulendum imminentiaque detrimento minore ac leviorre dispendio dirimenda . . . . . . obnixins precibus ab eo (Leoni X.) contendimus ut si Pragmaticae nomen omnino esset abrogandum, saltem vice illius bona sua conciliique venia certas nobis leges conditionesque meditari comminiscire liceret quibus Imperium nostrum supradictum in posterum uteretur quod ad ea quidem pertinet quae sanctione Pragmatica cavebantur."—D. de Maillane, t. i. p. 781. App.

(b) "Relation de ce qui passa sur la publication et l'enregistrement du Concordat au Parlement de Paris des années 1516 et 1517, contenant les raisons du Parlement pour empêcher cette publication et ces protestations à ce sujet."—1 De Pradt, p. 250.

(c) 1 De Pradt, pp. 204, 205.

(d) "Ad Papam melius consultum et futurum Concilium Generale legitime congregandum et ad illum vel illos ad quem seu quos petendo
granted its prorogation (e), first for six months, then for a year, then for another year. Francis was taken prisoner at Pavia in 1524: the consternation ensuing on this calamity was favourable to the Concordat. The King referred the cognizance of contested elections, as to the consistorial or more important benefices, to the Council of State.

Henry II. confirmed this decree in 1552, and thus a great obstacle was removed from the path of the Concordat.

In 1560 Francis II. sent an edict to Parliament, referring causes of religion to Ecclesiastical Judges. Parliament took an opportunity of addressing the King to restore the liberty of elections and the Pragmatic (f), essential, they said, to the welfare of his subjects. In the same year the successor of Francis, Charles IX., received remonstrances from the States at Orleans.

CCCXXXI. The earliest Concordat of the German Empire with the See of Rome was the Concordatum Calixtinum, betwixt Henry V. and Pope Calixtus II., A.D. 1122 (g).

Its historical and legal importance is but slight; it con-

Apostolos instantissime," &c.—Durand de Maillane, voce PRAGMATIQUE SANCTION.

(e) See what the French call the "disposition ampliative," which they distinguish from the Concordat itself, though it begins tit. xvii.:

T. xx. is "De prorogatione temporis ad recipiendum," &c.

1. "Ad postulationem Regis" (six months).

2. "Eo quod propter varias occupationes non fuit Concordatum approbatum et receptum a regnicolis" (one year).

3. "Conceditur secundus annus a fine prima computandus ad hoc ut Concordata recipiantur et observentur a regnicolis."

—D. de Maillane, voce CONCORDAT.

(f) "Ce règlement toujours cher aux Français," says D. de Maillane, voce CONCORDAT, t. i. p. 621; but which Leo X. calls, in his condemnatory Bull (19th Dec., 1516), "Regni Franciae corruptelam Bituri- censem."

(g) Eichhorn, Kirchenrecht, I., B. ii. Absch. ii. cap. 1. iv. Die Concordata.
tained the arrangement respecting investitures which has been already mentioned.

The Concordata of the fifteenth century (h) were in great measure founded upon the Basle decrees, which were formally accepted by a decree of the Empire at Mayence, in A.D. 1439 (i), and the firm attitude of the Electoral Princes extorted a ratification of this act from Eugenius IV. But in 1448 the Emperor Frederic III. entered into a separate Concordat with Nicholas V., whereby a large part of the claims sacrificed by his predecessor were regained by him for the Roman See. It would appear,

(h) Audisio, Juris naturæ et gentium.—l. 3, t. xii. De Concordatis.

"Au moyen âge, l’Église catholique romaine se regardait comme la plus haute autorité internationale. Mais le droit international actuel repose, non sur l’autorité de la religion ou de l’Église, mais sur une autorité politique, celle de l’humanité et des états. On reconnaît cependant une personnalité aux églises, et on considère les traités passés entre ces dernières et l’état, à peu près comme des traités entre état et état. C’est en particulier le cas, lorsqu’une église n’est pas nationale, c’est-à-dire restreinte au territoire d’un état déterminé, mais qu’elle a pour caractère distinctif son organisation spéciale. La nature des concordats conclus entre certains états et le Saint-Siège, le démontre clairement. L’église nationale d’un état peut aussi avoir, en vertu de conventions, certains droits vis-à-vis de l’état auquel elle se rattache ; mais leurs rapports seront plutôt du domaine du droit constitutionnel que de celui du droit international."

Bluntschi, p. 64, x. 26.

See also, Calvo, t. i. xii. p. 703.

(i) Sanctio Pragmatica Germanorum illustrata (confirmatory of, and suppletory to, Decrees of Basle and Mayence, accepted in Germany), Koch c. 9. (ed. Argentorati, 1789), consists of three parts:—

1. Historia Sanctionis Pragmaticæ.

2. Argumentum S. P. This part includes—

VII. De Cardinalibus Eccles. Rom.

II. Power of General Councils.

P. 61. c. ii. 1. Jura Pontifici ablata, Reservationes generales et specialæ, Gratiae expectatae.


P. 201. Tabulae Concordatorum inter Nicolaum V. Pont. et Fredericum III. Imp. (Vindobonæ initorum, a.d. 1448, 17th February.)
however, from the reply of Æneas Sylvius (k) to the "Murmur gravaminis Germanicæ Nationis" (l), in A.D. 1457, that, on account of the difficulties and troubles of the time in 1449, a compromise only between these Basle decrees and the Papal claims had been allowed by the Roman See, for he had rejected the notion that an absolute Sovereign like the Pope could make a treaty with his subjects.

In 1487, however, the entire Empire successfully resisted a tithe which the Pope sought to impose; and in A.D. 1500, the Empire granted the Pope only one-third of that indulgence, and reserved the two other parts for the war against the Turks. Nevertheless, the detestable Alexander VI. and his successor, Julius II., raised the Papal power to a height which enabled them to speak, at the beginning of the sixteenth century, the language held by Boniface VIII. at the beginning of the fourteenth.

The accomplished and dexterous Leo X. found little difficulty in emasculating the Decrees of Basle and Constance, by a Council held at Rome (A.D. 1512–17), and at last it appeared that all the advantage that the Reforming Councils had bestowed upon States and National Churches had shrunk into a few limitations upon the arbitrary application of the Reserved Privileges of the Papal See (m).

Pref. 2. "Palladium hoc Ecclesie Germanicae et sacram quam libertatis ancoram."

The Bulls of Ratification, issued 5th and 7th February, 1447, were called, in honour of the Princes, "Die Fürsten-Concordata."—Eichhorn, B. i. Abschn. i. c. v.

(k) He was then Cardinal: he became Pius II. A.D. 1458.

(l) "Æneas Sylvii Epistola ad Martinum Maiernm contra Murmur gravaminis Germanicæ Nationis, A.D. 1457," cited by Ranke, c. i., from Müller’s Reichstagstheatorum unter Friedrich III., p. 90.

Mayer was Chancellor to the Archbishops of Mayence.

Schröckh, xxxii. Theil. 172–215, contains a full account of the whole negotiation and of the long correspondences between the Chancellor and Cardinal; the former defending the liberties of the German Church, the latter maintaining, in language at least, the loftiest pretensions of the Pope.

(m) Schröckh, xxxii. p. 519.
The consequence of this retrogression in Ecclesiastical Reform was that portentous event in the history of the world usually called the Reformation.

The abuses and exactions (n) of the Court of Rome, and the gross wickedness of some of her Pontiffs, had heaped up that smouldering mass of disgust and discontent throughout Christendom, which, about the year 1517, the preaching of Martin Luther and Ulric Zwingle against the Indulgences of Leo X., kindled into a flame.

The way of General Councils had been tried, and had failed, and the National Churches appeared to have struggled in vain for their liberty. (o)

(n) Freely admitted by many modern Roman Catholic jurists and canonists.

Phillipps, iii. 325: "Es lässt sich nicht leugnen, dass eine nicht geringe Zahl von Päpsten sowohl durch ihre Sittenlosigkeit als auch durch den vielfachen Missbrauch ihrer Gewalt, namentlich in Betreff der geistlichen Strafen, selbst einen grossen Theil der Schuld an jenem traurigen Zustande der gesammten Christenheit auf sich geladen hatte."

See too p. 335: "Die völlige Sorglosigkeit der Päpste."

(o) See Verhältniss des Staats zur Kirche—Zacharia, Deutsches Staats- und Bundesrecht, Bd. iii. s. 218—as to the general constitutional law of Germany on the subject.
CHAPTER VI.


CCCXXXII. The Council of Trent (a), which has so materially affected the status of the Roman Catholic clergy, and in some degree the laity (b), has too much of an international character to be passed by without some notice. The rapid increase of Luther’s disciples, the many and admitted abuses of Rome, and the urgency of the Emperor Charles V., compelled Paul III. to convene this assembly.

It began in 1545 and ended in 1563. During these eighteen years it had many intervals and interruptions, and three distinct epochs.

The first under Paul III., 1545-1547.

The second under Julius III., 1551-1552.

The third under Pius IV., 1560-1563.


The great works of Thuanus (De Thou), and those of Sarpi and Pallavicini, the rival historians of the Council, are well known. There is a careful criticism upon their respective merits in the Appendix to the last volume of Ranke’s History of the Popes.

See, too, Giesler, Lehrbuch der Kirchengeschichte, Abschn. iv. c. i. s. 105. “Wirkungen der Schisma auf die allgemeine kirchliche Meynung.”

(b) E.g. as to the Law of Marriage, see Dalrymple v. Dalrymple, Judgment of Lord Stowell, 2 Consistory Reports, 64. Swift v. Kelly, 3 Knapp’s Privy Council Reports, 283.
The important questions mooted during its sessions gave rise to frequent debates of the most vehement character; they were decided, not as those at the Council of Constance had been, by the majority of the suffrages of nations, but by the majority of individual votes, as at the Council of Lateran—a proceeding which impressed an Italian rather than an International character on the conclusions of the Council, as the whole number of votes was 281, out of which 189 were Italians.

The English Church was not represented at this Council (c).

The representatives of the Spanish and the French Churches maintained, with great fervour, the Divine Right of Episcopacy, as emanating immediately from Our Blessed Lord, and not immediately from the Pope (d), meaning that the fact that a Bishop was made and confirmed by the Pope was no more an argument against his deriving his authority from Our Lord, than the fact that the Cardinals elected the Pope was an argument that his power was derived only from them. These Churches, moreover, maintained the superior authority of the Church generally to the authority of the Pope, and appealed to the Councils of Basle and Constance, which the Italians rejected.

The French Ambassador loudly demanded that the decisions of the Pope should be submitted to the Council, that the reforms of the Church in its Head and members, as had been promised at Basle and Constance, should be effected; and of these reforms the abolition of annates, and arrangements made for avoiding the necessity of sending for dispensations to Rome, were among the most necessary.

The King of France expressed his extreme dissatisfaction at the scanty measures of reform proposed, and many of the French bishops, and one of the ambassadors, withdrew

---

(c) There appears, by the lists, to have been one English Bishop.
(d) It was finally resolved to omit all notice of the institution of Bishops and of the authority of the Pope.
from the Council: the latter having previously protested against certain propositions as contrary to the rights of the Crown and the liberties of the Gallican Church (c).

The Tridentine Council closed 4th December, 1563; it was confirmed by a Bull of Pius IV., 26th June, 1564. A perpetual Congregation of Cardinals (f) was instituted to advise the Pope as to the interpretation of its decrees, all commentaries on which were forbidden. Canonists (g) hold that the Pope may dispense tacitly, and without express declaration, with decrees of this Council, though he cannot, without express declaration, derogate from those of other councils. They found this opinion upon the words (Decr. 21, Sess. 25.): “Ut in his salva semper authoritas sedis Apostolicæ sit et esse intelligitur.”

CCCXXXIII. The Decrees of the Council were arranged under two principal divisions or heads:—(1) The decrees concerning the Discipline (de Reformatione), and (2) those concerning the Faith, set forth in canons (canones) which closed with an anathema upon all who held a different opinion. These decrees depended of course, for their civil and legal validity beyond the Roman See, upon their reception by the authorities of other countries.

The French Kings at first solemnly protested against it, as a private assembly of certain prelates, who had insulted the ambassadors and attacked the liberties of the throne and Church of France.

The clergy of France were generally well affected to it, and often, but in vain, besought its legal promulgation (h). This promulgation was made by the Pope one of the conditions of Henry IV.'s reconciliation with Rome; but in vain did this

---

(c) See, as to the Pope's power of excommunicating Kings, s. 22. c. 4. De Ref.
(g) Ibid.
(h) De Concordantia Sacerdotii et Imperii sui de Libertatibus Ecclesiae Gallicanae, Petrus deMarca, Archiepiscopus Parisiensis (died 1662), l. vii. c. 28, 3.
popular monarch entreat the Parliament to consent to its publication, even with a general clause of reservation for the liberties of the Gallican Church. He was obliged to accept the answer of the illustrious De Thou (i), that the Parliament knew no precedent since the foundation of the monarchy for receiving a Council, without examining and reconsidering every article that it contained.

The Ordonnance of Blois (1579), however, incorporated into its text large portions of the Council of Trent, carefully avoiding to mention the source from whence they came.

Generally speaking, it may be said, that by edicts, ordinances, and usage, the principal decrees of the Council, as to matters of faith and discipline (k) have practically, though not formally, been introduced into France.

With respect to other European countries, the Trinitarian Council was generally received by them. It was rejected by the Catholic and Episcopalian Churches of Greece, Russia, Egypt, England, Ireland and Scotland, and, of course, by the Protestant and Non-Episcopalian Churches of Germany and the North, and by the civil Governments of all these countries.

CCCXXXIV. The religious wars which broke out at the beginning of the sixteenth century, and were extinguished by the Treaty of Westphalia, must be mentioned in connection with this subject of the Papal relations with independent kingdoms. Disgust at the practical abrogation of the Reforming Councils of Basle and Constance determined large bodies of religious persons to break off all connection with the Roman See. Not merely the relation flowing from the acknowledgment of the Pope as the visible Head of the Church upon earth, but the lesser and more reasonable relation flowing from the acknowledgment due by comity, and a regard to ecclesiastical order, to the

(i) Thuanus, l. vii. Memoirs preceding his History.
(k) Lekeux, iv. 394.
Patriarch of Western Christendom, were, in the hour of indignation and despair, forcibly snapped asunder by the Protestants of Switzerland, France, and Germany. The Germans *protested* in 1529 against the decrees of the Diet of Spires, which forbade any change in religious matters until a General Council could be held. They subsequently refused to submit to the decrees of a Council held in Italy, which they thought, not without reason, would be, in fact, the voice of the Italian, rather than the Universal Church. They presented their confession of faith at the Diet of Augsburg, 1530.

The profound treachery and great ability of the Elector Maurice united the Protestant Princes of the Empire (l) against Charles V. In 1552 the Treaty of Passau was made, and in 1555 the Diet of Augsburg was held, by which the liberty of exercising a religion unconnected with the Pope became part of the law regulating the mutual relations of independent States; though thirty years of a desolating warfare, which cannot, even now, be read without a shudder, were to be endured by Germany and Holland, before this principle was firmly incorporated into the Public Law of Europe by the memorable Treaty of Westphalia, signed at Munster and at Osnabruck in 1648 (m).

During this corrupt period, the minds of men upon all questions of civil and religious liberty were much affected by the circumstances and character of their time. Private ambition and avarice often wore successfully the mask of religious zeal. True ideas of liberty and religion were mixed with specious falsehoods, which sprung from pride of intellect and licentious passion. The consequences, as the subsequent pages of history are unfolded, may be traced in bloody characters in the crimes which stained the religious

---

(l) He concluded, at the same time, a secret treaty with Henry II. of France.

(m) *De Pactis et Privilegiis circa Religionem*. Moser. (Franckfort, 1738, ss. 19, 20, 29.)

Savigny, R. R. ii.
revolutions of many countries, and in the controversies which still agitate the world.

CCCXXXV. A new era of International Law opens from the date of this treaty, and especially with respect to the immediate subject of these chapters.

The treaty was signed—not an insignificant fact—without the intervention or ratification of the Pope, who protested in vain against those articles of it which confirmed the secularisation of ecclesiastical property, as his successor was destined to do upon the same ground, and with the same effect, against the last Treaty of Vienna.

The relations of the nations of the whole earth—for Christianity had passed the limits of Europe, and planted itself in a new world—were now both greatly and permanently changed towards Rome. Her claims in theory were the same. The Pope was still the Vicar of Christ upon Earth, the sole fountain of the Episcopate, the infallible Judge of all matters appertaining to religion; and if the logical consequences of supreme temporal as well as spiritual power were not put forward, they were not abandoned, and, indeed, had been remarkably exercised, at no very distant period, in dividing the newly-discovered regions of the world between the two independent States of Spain and Portugal, and were, as will be seen, as late as the year 1773, asserted in all their plenitude.

But the actual state of the world as confronted with these claims was this:—An Episcopal Church in Great Britain, deriving its Catholic doctrine and order from the early Fathers and Councils of the Undivided Church.

A Church in France, which claimed as resolutely as that in Great Britain the Divine Right of the independent Episcopate, and denied the power of the Pope to dispense with the customs of the national, or the canons of the visible General Church, though it acknowledged the Headship and the Patriarchate of the Successor of St. Peter.

Protestant Churches in Germany repudiating Papacy, and, as connected with it, Episcopacy.
The Churches under the Patriarchate of Constantinople, who charged Rome with being the original and continuing cause of the Schism of Christendom; and under this Patriarchate should be included, at this time, the Churches of Russia, Greece, Syria, and Egypt.

But in all these countries there were Roman Catholic as well as Catholic and Protestant subjects. How was the relation between the Roman Catholics and the Pope to be carried on when the religion of the State was Protestant or Catholic, but unconnected with Rome?—how were Protestant subjects to be treated in Roman Catholic, and Roman Catholic subjects in Protestant countries? This is perhaps the most difficult of State problems, and has never yet been satisfactorily solved.

The Reformation, and the spirit, which arose with it, of searching inquiry into the legitimacy and foundation of all claims, naturally affected the relations of Governments as well as of Churches with the See of Rome.

Before we consider these relations in the case of individual States, let us glance at their general features in all States during the period between the Treaty of Westphalia and the last Treaty of Vienna.

The Council of Trent was not able to extinguish the general desire—of which the decrees of the Councils of Basle and Constance had been the expression—for a National Church, one, if not wholly independent of Rome, yet connected with it only by a recognition of its Patriarchate and Primacy. Cismontane canonists, the Anglicans, and the Protestants, were continually employed in maintaining that the more the other claims of Rome were considered, the more it became apparent that their origin was to be traced to the false Decretals of Isidore, then and now admitted to be forgeries, and which had been fabricated for the purpose of maiming and weakening the true Apostolical rights of each individual bishop (n).

(n) "False decretales seculo nono illatae, videntur in hunc scopum fuisse fabricatae ut judicia Episcoporum redderent magis difficilia."—Lequeur, i. 339.
Many and sore appear to have been the strivings of the Church, in different countries, to return to this primitive state of order and discipline.

The attempt was acceptable to States and governors, because it tended to secure the national independence, and to prevent the allegiance of citizens from being distracted between the claims of a native and a foreign superior.

It was the constant endeavour, therefore, of all Princes and Parliaments, whether Roman Catholic, Catholic, or Protestant, to cut off the channels of communication and interference with their subjects which the Pope kept open.

The reception and authority of Legates and Nuncios, the appeal from Ecclesiastical Courts to Rome, the Annates, the establishment, and protection, and disposition of Religious Orders and Houses, were subjects upon which the governors of States were continually striving to repel the Papal claims; but there were two questions which, so far as International relations with the Papacy are concerned, almost exclusively occupy the foreground of the historical picture during this epoch, and upon which the struggle was most severe and most important.

1. The terms under which the Institution or Confirmation of Bishops should be obtained from the Pope.

2. The condition of previous knowledge and sanction on the part of the civil Government, with respect to all Bulls, Rescripts, or Apostolic Letters, promulgated by Rome within the dominions of the foreign State.

With respect to the first of these questions, it will be seen that, during the epoch which we are discussing, France, Austria, Portugal, and Naples were, once at least, upon the verge of returning to the primitive practice of instituting and confirming bishops, and of severing, as England had done, their Episcopal National Church from all dependence upon the Pope.

CCCXXXVI. There is one other question (o) connected

(o) Gerardi Noodt, Dissertatio Quarta, de Religione ab imperio Jure Gentium libera, vol. i. p. 641. (ed. Lugd. 1735): "Interest, inquis,
with this subject, of a mixed public and International character, the treatment of which has greatly perplexed the Governments of States, and with respect to which their intellectual errors and moral crimes have been of a most grievous kind—namely, the treatment of subjects professing a different religious belief from that established by the State; such errors and crimes as are illustrated in the treatment of the Huguenots in France, and, in a less degree, of the Roman Catholics in Ireland. No idea appears to have been of slower growth than that of real religious toleration. The absence of it led, as we have seen, to the intervention of foreign Governments on behalf of co-religionists in other States; but it led also to a still more strange result in France, for there the Roman Catholic Government (p), which would not tolerate religious dissent, concluded a regular treaty with its own Protestant subjects and delivered up towns and cities, like Rochelle, as a security

civitatum qua forma, quo ritu, quibus cæremoniis colatur Deus, nempe, ne fiant convenus, quorum initii in re\textsuperscript{2} publicam conjunctiones, et adversus leges stupra, adulteria, incestus, cedes, parricidia, falsa testimonium, fraudesve cogitentur. Non est enim religio qua perniciosi humano generi inducatur—seclus est cui pra\textsuperscript{3} textur color religionis—id cum turbat disciplinam, et stringat finem civilis conjunctionis, non obstat Dei veneratio, cur non perinde ad severitatem legum pertineat, ac si adhibita non esset imago religionis? Sic hominum sacrificia in Africa sustulit Tiberii principatus, sic Bacchanalia Romæ atque in Italia coercuit Senatus, cæterum, innoxia sit Religio nec. ad turpe atque improbum deflectat facinus, sed virtutem juvât et bonos mores, sed agat ut salva sit Reipublicæ reverence, quod improbetur? nisi si quis non flagitia sectæ affiniae, sed sectam quamquam scelere vacuam puniendam existimat? Sed hoc injusti ac feri et crudelis hominis esse, quis non videt?"

P. 642. "Nam si (secta) perdendæ sit Reipublicæ, non quia nova est prohiberi debet sed quia noxia."

P. 644. Noodt remarks that Valentinian the elder is praised by Ammi\textsuperscript{an}us (i. lib. 30, c. 9) for his toleration; and Noodt also cites Valentinian's Constitution, in the Codex Theodosianus, which ends—"Testes sunt leges a me in exordio imperi mei datæ quibus unicumque quod animo imbitiss set, colendi libera facultas tributa est. Nec Haruspicinam reprehendimus, sed nocentor exerceri vetamus." Valentinian was a Christian.

that the provisions of the treaty should be observed,—a most unnatural, fatal, and impossible policy.

The Edict of Nantes (A.D. 1598) and its revocation (A.D. 1685) are among the most painful and disgraceful, but also the most remarkable and instructive pages of history.

CCCXXXVII. The policy pursued by the Papacy upon this question of religious toleration deserves notice. The Pope, having in vain remonstrated, by his Nuncio, against the Treaties of Munster and of Osnabruck (q), put forth a protest (r), in the shape of a Bull, in which he represented these treaties as "infinitely prejudicial to the Catholic religion, to the Divine worship, to the Apostolical See of Rome, to inferior Churches, to the orders of the clergy, as well as to their ecclesiastical jurisdiction, authorities, immunities, franchises, liberties, exemptions, privileges, and rights; inasmuch as, by divers articles of one of these Treaties of Peace, the lands formerly possessed by the clergy in those countries are, amongst others, abandoned for ever to the heretics and their successors: the free exercise of their heresy is in several places allowed to these heretics, styled of the Confession of Augsburg; land is promised to be assigned to them to build temples, and they are admitted along with the Catholics to public functions and offices. . . . Therefore, we, of our own accord, from our certain knowledge, after mature deliberation, and by virtue of the plenitude of the ecclesiastical power, pronounce and declare by these presents that the aforesaid articles . . . . have been by right, are, and shall be for ever, null, void, of no value, iniquitous, unjust, condemned, reprobated, frivolous, without any force or effect, and that no one is bound to observe them, although they should have been confirmed or strengthened by an oath. . . . Nevertheless, by way

(q) Vide ante, vol. i. pp. 48, 335.
(r) Parl. P. for 1816, pp. 103, 104.
of greater precaution, and as far as may be necessary, "we, of our own said accord, knowledge, deliberation, "plentitude of power, condemn, reprobate, annul, suppress, "and deprive of all force and value the aforesaid articles," &c.

CCCXXXVII (A). The questions arising out of the Papal Encyclic Quanta Cura, and its Appendix, called the Syllabus (s) (issued 8th December, 1864) which have so much disturbed and irritated the Governments of civil States, and the recent (t) decree of the Vatican Council (u), in the Bull

(s) "C'est le 8 décembre qu'apparut le travail du père Perrone sous la forme d'une encyclique connue désormais dans le monde sous le nom d'encyclique Quanta cura, et suivi d'un syllabus ou série de propositions condamnées comme impies ou hérétiques. Pie IX traitait de délier la liberté de conscience et des cultes, déclarait qu'on n'est catholique qu'à la condition de n'admettre ni la séparation de l'eglise et de l'état, ni l'in- dépendance du pouvoir civil, ni la liberté de l'enseignement, de la presse, de l'association; il proclamait enfin que 'l'église a le droit de lier les consciences des fidèles dans ce qui se rapporte à l'usage des choses temporelles, et de réprimer par des peines temporelles les violateurs de ses lois.' Quant au syllabus, il condamnait quarte-vingt propositions qui contiennent, on peut le dire, les plus chères et les plus précieuses croyances des temps modernes.

"Les articles 16, 17, 18 condamment les cultes non catholiques, l'article 24 revendique pour l'église un pouvoir coercitif; l'article 42 réclame pour le pouvoir religieux, en cas de conflit avec le pouvoir civil, les droits que les gouvernements modernes ne reconnaissent qu'à ce dernier; l'article 48 revendique pour l'église le droit de s'immiscer dans la législation civile, par exemple, pour en effacer tout ce qui peut être favorable aux protestants et aux juifs; l'article 72 condamne le mariage civil; les articles 15, 77, 78, 79, 80, tout ce qui ressemble à la liberté religieuse ou politique."


(t) July 18, 1870, this Bull contains a "decreto"—De Romani Pontificis infallibili magisterio.

(u) Some of the documents relating to this subject, as well as to the incorporation of the Pontifical States into the Kingdom of Italy, will be found in the Appendix.

The following publications should be studied by all who are interested in the former subject:—


This work includes the Encyclic and Syllabus of the 8th December, 1864.

2. Documenta ad illustrandum Concilium Vaticanum anni 1870. Gesammelt, u.s.w. von Dr. Friedrich. Nordlingen, 1871.
or Costituzione *Pastor Aeternus*, with respect to the infallibility of the Pope, cannot properly be discussed at any length in this work \(x\). These questions are directly of a religious character, though they indirectly touch the International relations of States, inasmuch as they partake of the character of instruments issued by an authority which professes to control the acts of foreign subjects and to affect their relations to the Governments of the States of which they are members.

This indirect invasion of the civil rights of foreign Governments is of less importance, as a matter of International law, since the Pope has ceased to be a *de facto* Sovereign of an independent State; though, according to the recent Italian statute of *Guarantees* for the future *status* of the Pope, he retains a sovereignty, for certain purposes, without territory or the power of enforcing his own decrees by his own officers, so far as civil results are concerned.

\(x\) See Appendix for some papers on this subject.
CHAPTER VII.


CCCXXXVIII. The great evil of the Concordat of Francis I. (a) was the manifest inequality of the contract in one important particular between the contracting parties. It assigned a term within which the Crown must nominate, but no term within which the Pope must institute, the Bishop. In this inequality the ground was prepared for collision between the State and the Pope. The advantage was necessarily and greatly upon the side of the spiritual potentate. Upon the Episcopate the clergy depended for their order, the laity for the enjoyment of religious ministrations, and, indirectly, the whole realm for its tranquillity. If the Pope refused institution, the Crown had no means of redress, though its State was thrown into the utmost confusion, and its subjects were deprived of their greatest blessing. The means to which one temporal State resorts against another temporal State, of compelling the execution of the contract, were, or ought to be, wanting in this instance.

France and Naples might, and did indeed, sometimes sanction the invasion of the Papal territories, as of Avignon and Beneventum, and so far treat the Pope in this respect as a temporal Prince, as to have recourse to the means, which International Law would sanction, of compelling a temporal Prince to fulfil his contract.

(a) De Pradt, pp. 304, 305.
To dwell on the mischief done to the Church alone by this consequence of the Concordat (b) of Francis I., does not belong to this work; but such mischief to the State and Church could never have arisen under that primitive rule of the Church by which the Bishop was elected by the laity or clergy, or both, and instituted by his comprovincials and Metropolitan. "Il est sans doute conforme à l'antique discipline de l'Église gallicane d'attribuer aux Métropoles et aux plus anciens Évêques des métropoles l'institution des Évêques" (c), is the language of the "Exposition des Principes sur la Constitution du Clergé par les Évêques députés à l'Assemblée nationale" in 1791 (d), of which Pius VI. approved, and which a modern French Council has pronounced, not unjustly, to be one of the fairest monuments of the Gallican Church.

CCCXXXIX. Between the reign of Francis I. and Louis XIII. (e), on account of the Pope's refusal of a Bull of institution to a Bishop nominated by Henry IV. to the See of Auxerre, that see was vacant for twelve years. Louis XIII. underwent a similar refusal in the person of the celebrated De Marca, whom he had nominated to the Bishopric of Conserans; and the vacancy lasted six years, from 1642 to 1648.

Three Popes (f) successively refused the confirmation of the Bishops of Louis XIV., and the number of vacant sees amounted at one time to thirty-five. In later times the Pope sometimes accomplished the end of refusal in a less direct manner, by leaving out the name of the Prince in the Bull, which, according to the Concordat, ought to be there, and thereby making it appear that the nomination was made proprio motu of the Pope, and not of the

---

(b) De Pradt, i. c. 14.
(c) See this exposition at length in Lequeux, i. 499.
(d) Ibid. 387.
(e) De Pradt, i. c. 6.
(f) Innocent XI., Alexander VIII., Innocent XII.
Sovereign. Such Bulls were of course rejected by the Prince.

CCCXL. To these disagreements, in spite of a Concordat between the State and the Pope, Christendom is indebted for the ever-memorable declaration of the liberties of the Gallican Church.

As early as 1504 (g), the University of Paris protested against certain powers claimed by the Legate d'Amboise, with respect to the collation of benefices, and the rights of graduates, and asserted with respect to denying the absolute power of the Pope, that "in hac consistit libertas Ecclesiae Gallicane." In 1594, Pierre Pithou (h) published, under the title of "Libertés de l'Église gallicane," a sort of code of eighty-four articles, deduced from two maxims, namely, the independence of Princes, and the limitation of Papal authority by canons and councils. This code has been called by French writers the Palladium of France, and has actually been cited in edicts, as in that of November, A.D. 1719 (i). In 1651 it was published, after De Marca had defended it in his great work, with a "privilege" prefixed by the King, in which the work was represented as placing the Regalia of the Crown in ecclesiastical matters beyond dispute (k).

In A.D. 1614, the States-General complained bitterly of infringements upon their liberties. In 1663, the Sorbonne put forth six articles (l), denying, in the plainest language, all authority of the Pope, direct or indirect, in temporal matters, declaring that he had no power of dispensing with

---

(g) Lequeux, i. 358.

(h) The most learned Frenchman of his time; born at Troyes, died 1596, at the age of 57. François Pithou, his brother, shared his labours and fame.

(i) Durande de Maillane, cit. t. iii. 194, contains the eighty-four articles at length.

(k) The most famous commentary on Pithou's work is that of Jacques Dupuis, in two vols. folio. Some of the propositions contained in it were condemned by an assembly of the clergy in 1640.

the obedience of subjects, of deposing Bishops, that he was not infallible, and asserting the inferiority of the Pope to an oecumenical council, and proclaiming that the King had no superior but God.

In 1673 (m), Louis XIV. extended, by an edict, his Regale over all the dioceses of his kingdom. Two prelates (n) only resisted this edict; one of whom appealed to Pope Innocent XI., and was protected by him. The Archbishop of Toulouse, nevertheless, proceeded against the Bishop and his Vicars-General. The quarrel between the Crown and the Pope became exacerbated.

The King, under the advice of Le Pellier and Bossuet, appealed to a general assembly (o) of his clergy; and the result was the famous declaration of the clergy in 1682, sanctioned by thirty-four bishops, and contained in four articles, pretty much the same in effect as the six articles of the Sorbonne, and recognising by name the authority of the Council of Constance. It was approved by Royal Edict in March 1682 (p), and annulled by a Brief from Innocent XI., of April 11, 1682. The Pope arbitrarily, and not upon any alleged canonical or moral defects, refused Bulls of Institution to the Bishops nominated by the Crown. Alexander VI. went a step further than his predecessor, and published, January 20, 1691, the Bull Inter multiplices, by which he annulled the resolutions equally with respect to the Regale (q) and the spiritual authority,—a Bull, it may be observed,

(m) De Pradt, i. 335.
(n) D'Aleth and De Pamiers. The latter published a perspicuous little tract, entitled Traité de la Régale. "The Régale," he says, "consists in—"
"1. La disposition des revenus de l'Église vacante.
"2. La collation de plein droit des bénéfices non eures durant la vacance du siège épiscopal."—P. 5.
(o) It was at the opening of this meeting that Bossuet published his sermon "Sur l'Unité de l'Église."
(p) Which in February, 1810, Napoleon declared by an Imperial Decree, and promulgated as the Law of France.
(q) Lequeux, iv. 372, 373.
subsequently confirmed by another, the *Auctorem fidei*, of Pius VI. (r).

Meanwhile the question of ambassadorial privileges arose at Rome; the Pope excommunicated, the Ambassador protested (s). The Nuncio at Paris was put under restraint; Avignon was seized upon (t); thirty-five Bishops were refused Bulls; the Advocate-General of the Parliament of Paris spoke of the convocation of a council, and of a return to the Pragmatic of providing for their own Church without the Pope.

CCCXLI. The Bishops were on the point of rejecting altogether the Papal authority, when Louis XIV., aided by Bossuet, prevented this catastrophe (u).

(r) In 1786, when Scipio Ricci, Bishop of Pistoja and Prato, called a Diocesan Synod, which more than adopted the French articles.—*Coppi, Annali d'Italia*, i. p. 155.

(s) The following dissertations by D'Aguesseau should be noticed:—


"Fragment d'une v° Instruction, qui n’a pas été achevée.—Sur l'étude du Droit ecclésiastique.—Notions générales sur la manière d'étudier le Droit ecclésiastique."—*Ibid.* tom. i. p. 415.

"XXVI. Plaidoyer. D. 7 aoust 1693.—Dans la Cause de Frère Houdiart, Cordelier, qui s'était fait transférer dans l'ordre de S. Bencet et de Charles du Sault.

"1°. Si un Bref du Pape portant confirmation d’une translation d’un Religieux, déclarée abusive par un Arrêt, est abusif?"


(t) As it had been in 1663, when the Ambassador was insulted at Rome. Satisfaction was demanded and obtained, and an obelisk erected at Rome, with an inscription recording the fact.

(u) "Dies war der Augenblick, wo jene Bischofs auf dem Punkte standen, *das Schisma auch formell auszusprechen*; der Entwurf der Declaration war ganz in diesem Sinne von dem Bischof von Tournay gefasst.
Peace was made in 1693 with Innocent XI. Certain Bishops were induced to write a penitential letter to the Pope, and Louis XIV. promised him by letter that the Edict of 1682 should not be executed, though it was not to be recalled. For in 1713, when Clement XI. called upon Louis to forbid the teaching of the four articles, that monarch wrote a letter to say he had engaged not to enforce the execution of the Edict of 1682, but that it would be unjust to forbid the articles being taught. The Pope was satisfied, and issued the Bulls. The letter was kept as a trophy of the submission of the Gallican Church, brought to Paris by Pius VII. in 1801, and soon afterwards, it is said, burnt by Napoleon (x).

CCCXLII. The revocation of the edict of Nantes, the theological quarrels between Jesuits and Jansenists, and the miserable discords arising out of the Bull Unigenitus, closed, in sorrow and disgrace, the seventy-two years' reign of Louis XIV. in 1715; but it should be mentioned that, in the year 1695, an Ecclesiastical Edict—in imitation of those precursors of modern codes, the Civil Edicts of 1665 and 1670—incorporated into a sort of code, without reference to Rome, a recapitulation and readjustment of a great variety of previous domestic legislation upon the Gallican Church, especially of the mutual duties and relations of it and the civil power.

CCCXLIII. In 1716 (y), Clement XI. at first refused Bulls of confirmation on grounds connected with the Unigenitus Bull, to the Bishops of Bayeux, Tours, and Rhodes, but yielded at last to the positive demands of the Regent.

In 1723, when the infamous Dubois was installed in the chair of the President of the Assembly of the Clergy, he proclaimed his intention of acting the part of an Ultramoun-

---

(x) "On ne viendra plus nous troubler avec ces cendres," Napoleon is reported to have said when he burnt it.—De Pradt, i. 353, 354.

(y) De Pradt, i. 366. This was at the time when no opposition was made to the conferring of the Cardinal's hat upon Dubois.
tane Cardinal (z). But death interrupted his design of covering his many vices with the mantle of disloyal bigotry.

In 1762, the Order of the Jesuits, the great champions of the Papal Power, was suppressed by a decree of the Parliament of Paris.

CCCXLIV. In 1766, Louis XV. put forth a decree—in which he referred to the Edicts of 1682, 1695, and a decree of his Council in 1781, as containing the undoubted Law of France—that though the Church, having a real authority from God, was subordinate to no other in spiritual matters, the temporal power, "which emanates from God, is held from " God alone, and is neither directly nor indirectly dependent on any other power on earth;" that though the Church has exclusive power to pronounce upon questions of doctrine, yet the State, before it assisted in their execution, had a right to examine their form, to see that they are agreeable to the constitution of the kingdom, whether they will affect public tranquillity, as well as to prevent qualifications unauthorised by the Church being attached to their publication; that it was the duty of the temporal power to watch over the honour of citizens, and to see that it was not violated by the non-observance of ancient rules and formalities, with respect to which the Sovereign was to be considered as the external bishop and avenger; that he had a right to declare invalid vows which are not in conformity with civil or canonical rules, and to reject and exclude religious orders which are injurious to the State; and, therefore, that in order to preserve the just boundaries between the temporal and spiritual powers, it was ordered that all the royal edicts, and especially the edicts of 1682 and 1695, should be executed throughout the kingdom, and that the four resolutions of the assembled Bishops of the kingdom in 1682 should be inviolably observed, supported by all universities, and taught in all seminaries throughout the kingdom (a).


(a) See Appendix to Report from Committee on Regulation of Roman Catholics in Foreign Countries, ordered by the House of Commons to be
CCCXLV. Here we must notice the conduct of the Pope to a petty Italian State on account of the manner in which it was regarded in France. In 1768 the Duke of Parma made an edict upon a variety of subjects of a mixed civil and spiritual character, and, among other matters, forbade, without his permission, appeals to Rome from litigations as to the beneficiaries of the Duchy; he forbade also commissions to be conferred on strangers, and ordered that "no writing coming from Rome, or other foreign country," should have any effect in Parma without the Sovereign's exequatur. Clement XIII. published a Brief (monitorio di Parma) calling the Duchy his own (nostro ducato di Parma), declaring the edict void, forbidding all ecclesiastics to obey it, and pronouncing that all concerned in the publication had incurred the censures of the Bull In Cæna Domini, and could not be absolved except by the Pope or his successors (b).

Du Tillot, the Minister of Parma, appealed to the Courts of Europe against this act, and not in vain: for the reference to the Bull In Cæna Domini had exasperated all the Sovereigns, and the Bourbons were also especially offended by the aggression on their kinsman. Portugal condemned the Brief. The King of Spain put out an edict that the Bull In Cæna had never been received in his dominions. The Parliament of Paris reprobated the Brief (c), and observed that all countries rejected the In Cæna Bull, attacked violently the continual reappearance of obsolete and illegal

printed in 1816-1817, and to be reprinted in 1852. In this publication, but still more in the Correspondence respecting the Relations existing between Foreign Governments and the Court of Rome, printed by Parliament in 1851, is contained a vast mine of information. No work exists which gives the modern history of these relations with a fulness of detail at all comparable to this latter publication, and the authority furnished by the ministers of each country is indisputable.

(b) Coppi, i. p. 77.
Martens, Tr. i. p. 495.

(c) This arrêt (20th February, 1768) of Parliament is referred to as clear law in the first of the Organic Articles.—Vide post.
pretensions of Rome, and expressed indignation at the censure on the *exequatur, “which is the law of all countries “and particularly of France,”* and requested that the law, contained in the 77th article “of our liberties,” should be enforced, viz., “that all bulls and despatches coming from “the Court of Rome, without exception, are to be examined, “to ascertain whether they do not contain any thing that in “any manner may prove prejudicial to the rights and “liberties of the Gallican Church (d), and to the authority “of the King.” The principal propositions maintained by this Parliament were embodied and promulgated in a Royal Declaration in the same year.

The Pope found no support. Maria Theresa coldly replied to his solicitations for aid, that it was not an affair of religion, but of State policy. Venice declared also against the Pope. The King of Naples invaded Benevento and Pontecorvo; the King of France Avignon and the Venaissin. All the Sovereigns demanded the recall of the Brief, and the Papal suppression of the Jesuits.

CCCXLVI. Clement XIII. died in the midst of this tumult. Clement XIV. (Lorenzo Ganganelli), leaning rather to the Regalisti, who counselled concession, than to the Zelanti, who wished to uphold all the claims of Rome, restored peace. He prohibited the reading of the Bull *In Cæna*, made concessions to Sardinia, sent a Nuncio to Portugal, suspended the *monitorium* against Parma, and in 1773, true to the policy of the Roman See in the case of the Templars, pronounced the decree of dissolution against the most faithful soldiers of his see, the Jesuits.

The French Revolution was followed (1789) by the confiscation of the property of the Church, and what was called *the civil constitution* of the clergy, one main feature of


*Vide ibid.* for Letters Patent of the King in 1772, suspending the execution of the arrêt; but the substance of it was proclaimed in a Royal Declaration, 8th March, 1772.—*Vide ibid.* pp. 178–181.
which was that the Bishops, though they were to announce in writing their appointment to the Pope, were not to receive from him canonical institution, but from the Metropolitan or senior Bishop. Thirty Bishops protested against these measures, and the Pope condemned them in various Briefs.

CCCXLVII. Passing over the persecutions of the clergy, the history of the Constitutional Church, the consecration of constitutional Bishops, we approach the second and the existing Concordat of France, namely, that between Napoleon and Pius VII. in 1801. It consists of seventeen articles.

The preamble recognised on the part of France, that the “Catholic Apostolic Roman religion” was that of the great majority of French citizens, and, on the part of Rome, that great advantages had accrued, and were expected, to this religion from the re-establishment of it in France, and the public profession of it made by the Consuls; that a new arrangement of dioceses, “de concert avec le gouvernement,” should be made; that the First Consul should nominate, and the Pope institute Bishops, according to the ancient forms used in France; that the Bishops and Ecclesiastics of the second order, before entering into their functions, should swear obedience to the Republic, and not to abet by council or undertake any plot, “soit au dedans, soit au dehors,” contrary to the public tranquillity, and to reveal anything of the kind to the Government. It provided that the First Consul should have the same rights and prerogatives as the ancient Government. This Concordat was followed by certain Bulls, “Indults,” and Briefs (e) on the part of the Pope, the most remarkable of which was the Brief Tam multa, in which the Pope, in order to facilitate the new arrangements with Bonaparte, obliged eighty-one Bishops,

(e) Ecclesia Christi, 15th August, 1801.
Qui Christi Domini, 30th November, 1801.
Indult. Apostolicae Sedis, 9th April, 1802, by the Pope's Legate, Caprara, diminishing the number of Festivals.
admitted to be "anciens et véritables Évêques," as the reward of their fidelity to the Church, and their loyalty to the Crown, to resign their sees. Forty-five submitted; thirty-six \((f)\) resisted. It should never be forgotten that the Pope proceeded, by the Bull *Qui Christi Domini*, to deprive these thirty-six prelates of their sees, without the form of a canonical judgment, without an allegation of fault, much less of crime, upon the naked plea of the necessity of the time. Civil history might be searched in vain for an act of more flagrant injustice. Ecclesiastical history affords no precedent, and will, it may be hoped, afford no imitation, of so bare-faced a contempt for all moral right, as well as all Canonical Law and custom. The very apology gave the enemies of religion the occasion of rejoicing at the practically acknowledged dependence of the Church upon the State.

CCCXLVIII. Little good accrued to the Roman See from this servility to Napoleon I. On the very day upon which the Concordat was published, *articles organiques* of the Government were issued; which, though remonstrated against by the Pope, and though their abrogation formed a part of the abortive Concordat of 1817 \((g)\), remain, it should seem, to this day a *loi de l'État* \((h)\). These articles were prefaced by Portalis (no mean name in French jurisprudence). They contain provisions with respect to the verification of Bulls, the *Delegates of the Pope*, the *Decrees of Councils held out of France*, and of the *Appel comme d'abus* (with a very long enumeration of possible cases for its exercise), which secured the indepen-

\((f)\) Some of these retired to England. They formed what was called "La Petite Église," and which, like the Nonjuring Church in England, continued to exist for some time. Indeed, it would appear not to have been wholly extinct in 1852. For some account of them, see *The Guardian* of February 4, 1852.

\((g)\) *Lequeux*, iv. 400.

\((h)\) The clause for its abrogation was one of the impediments which prevented the execution of the proposed Concordat; for the clause would have required the consent of the Chambers, which could not be obtained. —*Ibid.* 402.
dence of the kingdom in a more stringent manner than any preceding edicts or regulations had done (i). The memorable journey of Pius VII. to Paris, his consecration of Napoleon, their subsequent quarrel, chiefly on the Bulls of institution, the outrage offered to the Pope at Rome, Napoleon's demand that the Holy See, in logical consistency with its claims and position (k), should cease to hold any communion with Schismatics like Russia and England; the final annexation of the Papal dominions to France by the decree of Schönbrunn (l) (17th May, 1809), the scandalous seizure of the Pope, his imprisonment (m) at Savona and Fontainebleau, and the excommunication of Napoleon, are pages of history well deserving of study, but which the limits of this work compel us to pass by; nevertheless, it belongs to the object of this chapter to notice that Napoleon sought to justify his outrage by referring to the donations of his "auguste prédécesseur," Charlemagne, to the Roman See, as having caused an incompatible mixture of temporal and spiritual power, fruitful in discord, because it had always induced the Pope to employ the influence of the latter to support the pretensions of the former (n). At the very time when Napoleon brought these charges against the Pope, he meant to make his spiritual power a political instrument, and to fix his residence in France.

CCCXLIX. The Pope resorted for his defence to the weapon of his predecessors; he issued a Bull (o) of excom-

(i) Articles 23 and 24 provided for the teaching in all schools of the four Gallican propositions.
(k) Schoell, Archives historiques et politiques, ii. 3.
(l) Koch, Hist. des Tr. iii. 115.
(m) Napoleon's conduct was shameful, and wholly indefensible. But it is sometimes forgotten that the great Charles V. at the same time imprisoned the Pope and prayed for his deliverance from captivity, and that Charles V. was never excommunicated.
(n) It is truly said by Ranke, that the Constituent Assembly meant to detach itself from the Pope, the Directory to destroy him, and Napoleon to make him a tool.
(o) In the Memorie del Cardinale Pacca, i. 234, this Bull is to be
munication, not against Napoleon by name \( p \), but against all who had in any way perpetrated, connived, assisted at, or counselled the division and rapine of the Holy See. This is no longer \( q \) the last instance in history of the exercise of this power by the Pope. It—like the Bull of March 26, 1860, against the invaders of the Pontifical States—was couched in different language \( r \) from the Bulls against Henry VIII. and Elizabeth; it did not call upon the subjects of the excommunicated Prince to rebel, or upon foreign Powers to invade his territory, but it refused absolution from the penalties of the \textit{Major Excommunicatio}, "donec omnia " quomodolibet attentata publice retractaverint revocaverint " cassaverint et aboleverint, ac omnia in pristinum statum " plenarie et cum effectu reintegraverint, vel alias debitam " et condignam Ecclesiae ac nobis et huic sanctae Sedi satisfi-" factionem in præmissis præstiterint" \( s \). The spiritual power of the Pope was therefore exerted, if not to extend, as it had been in 1707 and 1768 \( t \), yet principally to recover territorial right and property: all these latter excommunications were practical applications of the article in the Council of Trent \( u \) which has been mentioned above, and which was cited in the Bull of Pius VII. \( x \).

CCCL. At Savona the Pope consented, if consent can be predicated of a prisoner, to the demand of his captor, that when a Bull of institution had been refused by him on other than those of personal unworthiness, the institution

found \textit{in extenso}. I cannot discover it in the volume of the \textit{Bullarium} which relates to Pius VII.

\( p \) "\textit{Gubernium Gallicanum}" occurs in the instrument. So in the Encyclic of 1871, and other preceding documents \textit{Subalpinum Gubernium}.

\( q \) As it was when the first edition of this work was published.

\( r \) \textit{De Pradt}, ii. 406, 407.

\( s \) \textit{Memorie del Card. Pacca}, p. 247.

\( t \) To support the claims of the Papal See to the Duchy of Parma, the Pope twice issued excommunications—once in 1707, once in 1768—against the Duke of Parma.

\( u \) Sess. 22. c. iv. is mentioned in \textit{Pacca}, but it must be a misprint for xi.

\( x \) \textit{De Pradt}, ii. 324. See the instrument of consent, p. 470.
should devolve after six months on the Metropolitan (y). This provision, which Roman Catholic Princes have always striven for in vain, was also inserted in the fourth article of the Concordat, signed at Fontainebleau, January 25, 1813 (z). That Concordat the Pope, as is well known, afterwards, though by no means immediately afterwards, repudiated, and it may always be truly said that, inasmuch as the free agency of both parties is of the essence of a valid contract, and the Pope was at this time a prisoner (a), and not permitted to consult with the advisers whom he would have chosen, his approbation was an extorted act and null. Nevertheless the great feature of this Concordat was to secure religious peace to France; it prevented the possibility of the clergy and laity of France being deprived of the functions of the Bishops at the arbitrary will of a foreign spiritual power. The Pope would have been no longer able to refuse institution to a canonically qualified nominee of the Prince, without assigning any reason, or assigning one which had a clear reference to temporal, and not to spiritual grounds. The Prince was obliged to nominate within six months, and the Pope to institute within the same period, otherwise the institution devolved on the Metropolitan, or on the oldest Bishop of the province. Such a scandalous vacancy of sees as has been already mentioned could never, under these regulations, have again disorganized the Church (b).

(y) This was also declared, after the failure of the Ecclesiastical Council in 1811, by the Edict of 5th August, 1811. The Pope at Savona agreed to this, but the Metropolitan was to institute in the name of the Pope.—De Pradt, 501, 512, note.

(z) See this Concordat, Pacca, ii. 215.

De Pradt says that Pacca belonged to that class of men "faits pour tout gâté."

(a) "Ma ci siamo in fine sporcificati (sporcati). Quei Cardinali . . . mi strascinarono al tavolino, e mi fecero sottoscrivere," Pius VII. said to Pacca. At the same time, it would seem, from what passed between them, as if, at that time, the Pope did not intend to rely upon the contract being void, as extorted by force.—Pacca, ii. 196-199.

(b) De Pradt, iii. 13.
The restored House of Bourbon endeavoured to effect a fourth Concordat, that of 1817, by which the Concordat of Francis I. should be re-established; that of 1801, and the organic articles, abolished: but the attempt (c) was vain (d).

During the Pontificate of (e) Gregory XVI. and the reign of Louis Philippe, Monsieur Guizot used his utmost efforts to bring the Papal Government (f) into harmony with the improved and improving civil administration of every other State.

His correspondence in 1845 with Rossi (g) the French ambassador at Rome, himself an Italian, is interesting and instructive. It furnishes one of the many proofs that the improved civil administration, which the interests of the governed, no less than the spirit of the age, required, was incompatible with the maintenance of the Jesuit influence and the Papal Curial system. It was not that the priest did not desire the happiness of the subject as much as the statesman; it was not that the priest could not, because he was in holy orders, be a statesman, but that, from various reasons, the government of the Pontifical States was regarded under totally different aspects by the one and the

(c) See this embryo, Ibid, iii. 76, note.
(d) The negotiations continued till 1822. The Bull, Paterna Pietatis, recognising eighty French sees, appeared 10th October, 1822.—Lequeux, iv. 406, &c.
(e) Gregory XVI. died on the 1st June, 1846. On the 16th June, John Maria Matei Feretti succeeded as Pius IX.
(f) "Il (le Roi) espère que le concours du chef de l'Église ne lui manquerait pas dans les circonstances où il s'agirait de concilier les droits et les devoirs de la puissance temporelle avec ceux de la puissance spirituelle, et de mettre les nécessités modérées de la politique en harmonie avec les vrais intérêts de la religion."—Guizot to Rossi, March 2, 1845.
(g) See his letter to Guizot, April 27, 1845.

"Les choses sont toujours dans un état déplorable, et il n'y a en ce moment point d'amélioration à espérer. . . . Cette situation se complique des Jésuites. Ils sont mêlés ici à tout—ils sont des aboutissants dans tous les camps—ils sont pour tous un objet de craintes ou espérances," etc.
—Guizot, Mém. de mon Temps, etc. t. vii. p. 400.
other. Whatever was the cause, the failure of Guizot was as conspicuous as the subsequent failure of Napoleon the Third (\( k \)) to effect that entire change in the system of civil administration which alone could have arrested, or at least delayed, the incorporation of the Pontifical States into the Kingdom of Italy.

The rapid creation of the present Kingdom of Italy, after her long and bitter oppression, is one of the marvels of modern history, and evidences how much may be done by the courage and wisdom of a comparatively few master minds, and how true is the motto of the patriot, never to despair of the commonwealth.

The Encyclic and the Syllabus (\( i \)) of 1864, the objurgatory letter of the Pope to the excellent and enlightened Archbishop of Paris (\( k \)) in 1865, the Vatican Council of 1870, con-

\( (k) \) At the opening of the session of the French chambers on the 1st March, the Emperor Napoleon III. said, among other things, "Facts, however, speak loudly for themselves. For the last eleven years, I have sustained alone at Rome the power of the Holy Father, without having ceased a single day to revere him in the sacred character of the chief of our religion. On another side the population of the Romagna, abandoned all at once to themselves, have experienced a natural excitement, and sought during the war to make common cause with us. Ought I to forget them in making peace, and to hand them over anew for an indefinite time to the chances of a foreign occupation? My first efforts have been to reconcile them to their sovereign, and, not having succeeded, I have tried at least to uphold in the revolted provinces the principle of the temporal power of the Pope."—\( \text{Ann. Reg.} \text{ 1860, p. 215} \).

\( (i) \) See \text{Ann. des Deux Mondes}, t. xiii. pp. 206–210. \text{App. 958, 965, and 968}.

\( \text{Offizielle Aktenstucke, 149, for Speech of French Ministers, 10th July, 1868, as to the Encyclic, Syllabus, and Vatican Council.} \)

\( (k) \) \text{Off. Akt.} p. 95. In this letter of the 6th October, 1865, the Pope reproaches the Archbishop for maintaining that the authority of the Pope over a diocese "\( \text{nece ordinarium nec immediatam esse,} \)" and only "\( \text{quando diocesis ipsa ita aperte sit inordinata ac perturbata ut Summi Pontificis sit unicum remedium quo animarum saluti et Pastorum negligentie consuleretur.} \)" This was clearly a Jesuit blow at the liberties of the Gallican Church. Guizot wrote to Rossi: in the letter already cited, about the illegal conduct of the Jesuits in France: "\( \text{Il y a là une violation evidente des lois de l'État et de celles qui constituent la discipline de l'Eglise gallicane.} \)"
spired, with the defeat of France by Prussia, and the necessary recall (August 2, 1870) of the French troops from Rome, to make it obvious that the Papal system would no longer be maintained by the army of the foreigner. Austria and France had both failed in the attempt (7). The general opinion of Catholic and Protestant recognised the fact, and the necessity of a new order of things, which should acknowledge at Rome, as elsewhere, the right of the governed to have a voice in the choice of their government (m).

CCCLII. We have now to consider the Papal relations with Germany, and especially with Austria.

The effect of the Council of Trent (n) was to strengthen the power of the Pope in those parts of Germany where a reaction had given the Roman Catholics a decided triumph over the Protestants.

This increase of power was principally established and exercised through the intervention of the Papal nuntius.

The necessity of arranging the vexed state of ecclesiastical matters in Germany, had, ever since the reign of Charles V., afforded the Court of Rome an excuse for a perpetual nuntius at the Imperial Court.

The fact that the Papal consent was required to the inter-

(7) See correspondence relating to Rome laid before Parliament 1870-71. Pp. 83, 84. The French Republic, through M. Senard (22nd September, 1870) announced to the King of Italy: "Le jour où la République française a remplacé par la droiture et la loyauté une politique tortueuse qui ne savait jamais donner sans retenir, la Convention du 15 septembre [i.e. 1864] a virtuellement cessé d'exister."—Ibid. p. 15.

Memorandum of the Italian Government on the Roman Question, 29th August, 1870. On the 22nd of July, 1871, there was an important debate in the Assemblée Nationale, originating in certain petitions to that body praying that France would take measures, in concert with other States, "afin de rétablir le Souverain Pontife dans les considérations nécessaires à sa liberté d'action et au gouvernement de l'Église catholique."—Journal offic. de la Rép. française, 23 juillet 1871. See also Appendix to this volume.

(m) Vide post. Papal Relations with Italy.

(n) Eichhorn, I., B. i. Abschn. iii. c. 1, p. 294.

Phillippi, 338, as to the effect of the paritat system on the Empire.

VOL. II.  E E
pretation and execution of the Tridentine decrees, confirmed and enhanced the authority of this minister. In 1566, a nuntius had also been established at Lucerne, for Roman Catholic Switzerland and for part of Germany. During Clement VIII.'s Papacy (1591-1605), the nuntius at the Imperial Court was armed with full powers, and, for a considerable space of time, the Church in Germany was more immediately under the control of the Roman See than it had been at any time before the Reformation, while the rights and functions of her bishops were overridden and enfeebled, if not quite absorbed, by the plenitude potestatis of the delegate of the Pope.

The struggles, however, of the Gallican Church to restore the Church to the primitive state in which she existed before the False Decretals had been forged, to maintain the independent substantive rights of her native episcopacy and to confine the primacy of the Pope to the definite object of upholding, by his Patriarchate, the visible unity of the Church,—these struggles were not without their effect in Germany, and especially in the vast domains of the House of Austria.

The beginning of the eighteenth century produced the great work of Van Espen (o). It placed what has been called by German writers the Episcopal System, as opposed to the Papal System, upon foundations too deeply laid in historical erudition (p) to be shaken by any answer of the Roman See.

The work remains to this day the great light of Canonical Jurisprudence. Upon the principles which it contains, the relations of Church and State, both with each other

(o) The Jus Ecclesiasticum universum hodiernœ disciplinae, was published at Cologne, 1702; also Tractatus de promulgatione legum Ecclesiasticarum ac specialiter Bullarum et Rescriptorum Curiae Romane. Van Espen was born 1646, and died 1726.

(p) For which, however, he was much indebted to Thomassinus, and to the invincible argument drawn from that source.
and with Rome, might find a peaceable and equitable adjustment.

CCCLIII. The Episcopal System received a yet further support from the writings of the Suffragan Bishop of Treves (q), Von Hontheim (r), and from the writers who flourished under the protection of Maria Theresa and Joseph II. The reforms of this Emperor, hastily, perhaps, and arbitrarily executed, were not ill received by his subjects. So far as they related to the relations of Austria with the Roman See, they greatly curtailed the power of the Pope; they conferred upon the Bishops authority over the Religious Orders, and forbade the latter to have any relations with any foreign spiritual powers. Dispensations were no longer to be obtained from the nuntius, but from the bishop; the "recursus" to Rome from the national spiritual tribunals was greatly restricted; the promulgation of all Papal Briefs or Bulls was to depend upon the permission of the Crown, signified by the Placet or Placitum Regium.

By imperial decrees (s) of 1767, 1781, 1791, all Papal rescripts, as well originals as copies, are to be submitted to the provincial Government, and afterwards to the supreme tribunal, with the opinion of the Attorney-General and of the provincial Government thereupon. This law, however, applied to all Papal rescripts of former times. No one would use them without the imperial placet.

(q) Eichhorn, ubi supr. Phillipps, iii. s. 136.
(r) Under the assumed name of Justinus Febronius, De Statu Ecclesiae et legitima Potestate Romana; Bullioni et Francof. 1763.—Ibid. 1765. Condemned by Clement XIII., 29th February, 1764.—Phillipps, ubi supr.

Ehenders, Was ist der Papst? (Wien: 1782.)

(s) Enchiridion Juris Ecclesiasticii Austriaci.—Rechberger. (Linz: 1809), i. s. 272.
The right to examine the credentials of Papal Legates, the right to dismiss, and the exemption from the obligation to them, was fully established; all Papal reservation of benefices was entirely done away with by the Decree of October 7, 1782. In 1781, the Minister, Prince Kaunitz, wrote an answer to the complaint of the Pope's Nuncio, in which he observed, that abuses had been successively introduced "into the doctrine of Jesus Christ propagated "by his Apostles" which were "contrary to the maxims "of all good Governments; that the Pope had no authority "whatever in the State, except on dogmatical or mere spi-"ritual points; that the Emperor had only restored to the "Bishops the rights which the Pope had wrongfully taken "from them" (t).

CCCLIV. In the year 1786 the erection of a new Nuntiatura at Munich determined the Emperor to assemble at Ems the three Prince (u) Archbishops of Germany (Mayence, Treves, Cologne) and the Archbishop of Salzburg, in order to consult in what manner the German Episcopacy might recover the rights of which it had been deprived by the Pope. The result of their meeting was expressed in what the Germans call a Punctation, signed at Ems by the four Archbishops, the highest ecclesiastical authorities on this side of the Alps, in 1787-8 (x).

Their resolutions deserve careful study; they upheld the Episcopacy, and denied the claims of the Papacy, pretty much in the same manner as England and Queen Elizabeth, before her excommunication, would have done (y); for they expressly denied to the Papacy any authority or rights but

(t) See Parl. Papers, 1815-17, p. 84. Letter at length, Storia del anno 1782.
(u) Vide ante, their creation in Eichhorn, ubi supr.
(x) Joseph Il., says Phillipps, iii. 378, "auf dem Puncte stand, sich gänzlich von dem Oberhaupte der Kirche loszusagen."
(y) Report, &c., laid before Parliament (1816-17, reprinted in 1851) (pp. 86-96). The whole proceedings at Ems are set out at length in translation. See also Resultate des Emscher Congresses, von den vier Deutsch- en Erzbischöfen unterzeichnet u.s.w. Frankf. u. Leipz. 1787-8
those which could be proved to have been attached to it in the first centuries. Joseph II., in spite of Pius VI.'s journey to Vienna, was eager to reform the Church upon the principles laid down by the Archbishops; but the Bishops collectively gave him no assistance. The furies of the French Revolution were about this time let loose upon terrified Europe; and in the midst of the tumult of the Revolution, the Pope condemned the Synod of Pistoja for adopting the maxims of the Gallican Church.

CCCLV. The scandalous treatment of Pius VI. by Napoleon, and the eminent piety and virtues of this Pontiff, caused a general reaction in his favour. After the dissolution of the ancient German Empire, in 1806, neither the "Rheinische Bund" nor the "Deutsche Bund" (z), which succeeded to it in 1815, intermeddled in religious matters, further than to admit all persons professing Christianity equally to civil and religious rights.

CCCLVI. The secularisation of the German ecclesiastical property was accepted as a fact of history by everybody but the Pope, who formally protested against it at the Treaty of Vienna (a).

CCCLVII. By the Concordat signed August 18, 1855 (b), between Austria and Rome, the liberties of the Austrian Church were much impaired, and the rights of the State much encroached upon. It gave great dissatisfaction to the people, and was practically abrogated by the statutes enacted by the Reichsrath in 1867-8. These laws established (c) the civil contract of marriage, opened

---

(z) Eichhorn, K. R., B. i. Abschn. iii. c. 1.

(a) With respect to Hungary, see Conspectus Juris Publici Regni Hungariae, per Čziráky (Vienna: 1851), t. ii. c. ix. De Jure Regis circa negotia Religionis præséntim, s. 479. The Pope confirms the Bishops nominated by the Crown; but the Bishop, before such confirmation, is entitled to the dress, revenues, rank, and seat, "sicut in Comitiis sic et in Synodis," belonging to his see.

(b) Ann. Reg. 1855, p. 279. The Times, November 20, 1855, contains the Concordat at full length, translated.

(c) Offizielle Aktenstücke.
the schools and places of education to all religious creeds, and allowed to all persons the free exercise of their religion.

On the 15th May, 1869, Baron von Beust replied, upon the part of the Austrian Government, to a remarkable despatch (April 9, 1869) from Prince Hohenlohe (d) on the part of the Bavarian Government, respecting the Vatican Council which was then convened and was subsequently held at Rome, December 8, 1869. The Baron dwelt with much force upon the fact that while the Papal Curia departed from all former precedents in refusing to allow the presence of Secular Princes, or their representatives, at the Council, they nevertheless apparently intended to legislate on subjects which concerned the civil power, and without the consent of which the decrees of the Council would be incapable of execution. The Baron considered the existing civil law sufficient to repel any encroachment of Rome upon the temporal rights of the Austrian Government and people; though he seems to have been aware of the danger that, through the agency of the confessional, such an attempt might be made, in a manner difficult to resist, and which might require new legal measures of protection.

CCCLVIII. It would surprise many superficial readers of history to learn that no countries have more strenuously resisted the aggressions of Rome than Spain and Portugal (e).

In the early annals of Spain, towards the beginning of the thirteenth century, Alonso X. makes no mention of Papal confirmation in the consecration of Bishops, when directions are given by him as to the manner in which they shall be chosen. The Kings of Arragon and Naples were in constant hostility with the Pope.

CCCLIX. It is true that, anterior to the Austrian Dynasty,—however much the monarchs of Spain might have protested against the various abuses of Rome, the sums of money extorted for dispensations, and the exemptions

---

(d) Vide post.
(e) See papers, already referred to, laid before Parliament in 1814-17, and 1851.
and exclusive privileges of the clergy,—the point upon which the monarchs chiefly showed an energy, beyond that of merely protesting, was, the nomination of Bishops, which they always maintained as an unquestionable prerogative of the Crown.

CCCLX. But after the Austrian dynasty became seated on the Spanish throne, the ecclesiastical independence of Spain was much more firmly maintained. The hypocritical prayers of Charles V., for the liberty of the Pope whom he had imprisoned, have been already referred to (f).

In 1568, Philip II., in consequence of some attempt of the Pope to invade the royal prerogative, declared that he had a right to present to all the bishoprics in Spain; and in 1588 he created a Board ("Supremo Consejo de la Camara") for the purpose of inquiring into and watching over the rights of the Crown, and preventing their invasion by the See of Rome. In 1633, Philip III. sent an embassy to Rome to demand a reform of various abuses, and the Pope conceded a certain measure of reform.

CCCLXI. When the Bourbons were seated on the Spanish throne, the mixed character of the Pope, as a temporal and spiritual monarch, brought the Roman See into no small embarrassment.

In the European War of Succession, the Pope declared for the Austrian Archduke. Philip V., indignant at this display of partizanship, in 1709, forbade his subjects to hold any communication with the See of Rome. In 1714, a Concordat was patched up between Clement II. and Philip V., which was never published, and never, in fact, executed by Rome. The same fate attended another Concordat in 1717.

When the Infante Don Carlos conquered the Two Sicilies, the Pope intrigued with the Italian party, which provoked the Emperor of Austria; while the King of Spain (Philip V.) ordered the Cardinal Aquaviva to leave Rome, and to bring with him all the Spaniards resident there; and he promul-

(f) Vide ante, p. 412, note (m).
gated several decrees, suspending every species of communication, civil as well as ecclesiastical, with the Roman See.

CCCLXII. In 1770, a Pragmatic Sanction was promulgated on the subject of communications with the Roman See, and in 1803, when the Archbishop of Nicea was made the Pope's Nuncio at Madrid, a special order was made by the King's Council as to the restrictions under which his office was to be limited. In 1805, the King put forth an Edict, which, reciting "that there existed at the Court of "Rome many ecclesiastics and secularised priests, who were "employed in negotiating pontifical favours and dispensations, and in offering them to the ecclesiastics," ordered that every pontifical grant or reservation should be authorised by the Visto Bueno of the King's general agent at Rome.

In 1806, "in order to strike at the root of the shameful "traffic made in Rome by some Spaniards of the pontifical "favours," a Royal Cedula directed that no dispensation or favour from the Roman Curia should be valid unless demanded originally by the royal agent resident at Rome.

In the reign of Ferdinand VII., a report was made to him upon the Papal rights in Spain (g), in which, among other things, it was set forth: "Your Majesty is well aware "that the Roman Curia is always under arms to oppose "your Majesty's prerogative. It is true that all Briefs and "Rescripts from the Roman Curia must undergo a revision "in this kingdom; but this, Sire, is a requisite not exclu-
sively established in Spain; it is used in all Catholic king-
doms under different names, although always intended for "the same purposes. It is called Pase, Placito, Exequatur, "Letters of Pareatis, or otherwise, because all Sovereigns

(g) Parliamentary Papers, 1851, p. 305.
"Ya ve Vuestra Magestad que la Curia Romana está siempre en ar-
as para hostilizar las regalías de Vuestra Magestad." Again, "Contra las demásias de la Curia unas veces sorprendida, otras engañada, siempre empeñada en estender sus facultades fuera de sus justos límites."
“enjoy the same rights and have the same duties imposed on them.”

CCCLXIII. Before the death of Ferdinand VII., Amat de San Felipe, Archbishop of Nicea, succeeded Cardinal Fiberi as Nuncio at Madrid. The Pope’s Brief accrediting him to the office was still awaiting, according to the law, the signature of the Council of Castile, when Ferdinand died.

The practice of International Law required that the credentials of the diplomatic agents should be renewed. The Spanish Government immediately communicated to the Pope the death of Ferdinand, and the succession of Queen Isabella II. by virtue of the Pragmatic Sanction of 31st March, 1830 (of which a copy was enclosed), and the universal recognition of Her Majesty by her subjects. The Pope replied that he must abstain from recognising Isabella, and that he could not consider the Pragmatic Sanction as conclusive evidence of her right.

It is worthy of remark, that at so very recent a date we find the Pope maintaining in substance the old claim, sometimes said to be abrogated, but which appears always ready to be re-asserted and re-exercised, of interference in the political and civil affairs of a foreign independent nation. If it be said that the Pope only exercised his right as a temporal Prince in refusing to recognise Queen Isabella, then the event well illustrates the incompatibility of the mixed spiritual and temporal claims of Rome with the peace and independence of other nations. The consequences were, that political relations were broken off between Spain and Rome; that subsequently many episcopal sees became vacant, and the Spanish Government, strictly in accordance with the Concordat, nominated the new Bishops. The Pope, however, objected, not because, the Bishops-elect were objectionable on the grounds of learning, morality, or doctrine, but because, not having recognised Isabella II., he could not confirm her Bishops, which would imply his recognition of her title.
It appears that the Pope afterwards offered confirmation on condition that the presentation by the Queen was omitted, and that the words "motu proprio et benignitate Sanctae Sedis" were inserted in their stead.

This attack upon the most cherished prerogative of the Crown was firmly resisted: and this scandalous state of the Church in Spain actually continued till, in 1848, Queen Isabella was recognised by the Pope (h).

CCCLXIV. Here, then, as in the case of Napoleon, the Pope refused, on grounds strictly political, the exercise of a strictly spiritual power, without which the foreign country, over which he claimed to exercise it, and in behalf of which he would have appealed to the people against the Government, must be deprived of the most essential elements of its peace and well-being, namely, the reception and enjoyment of religious rites.

CCCLXV. It seems necessary to make some remarks upon certain Concordats which have been entered into between Spain and Rome. On the 26th of September, 1737, a Concordat was negotiated with Clement XII., but it was not satisfactory; and Ferdinand VI., under the advice of his Minister, José de Carbajal, obtained through his Ambas-

(h) Vide ante, pt. 5. c. iv, as to Recognition generally.

Far wiser and sounder is the course of religious policy recommended by Gioberti, who maintains that Recognition is an essential Catholic doctrine:—" Quando un governo è stabilito, quando è riconosciuto dai vari poteri della nazione, e dal complesso degli altri popoli incivili e cristiani, è legittimo per ogni verso, qualunque possa essere stato il difetto della sua origine; perché, supponendo esiandio questa origine vizioosa, la legittimità gli è conferita dal concorso degli altri poteri sovrani, interni ed esterni, che lo riconoscono. Tal' è la dottrina cattolica così nella teorica come nella pratica: tal' è la sola dottrina, che s' accordi coi principii della diritta ragione. Se le massime dei legitimisti fossero fondate, ed una dinastia riconosciuta da tutti i poteri interni della nazione, da tutti i potenti esteriori, senza escludere il capo supremo della Christianità, fosse usurpatrice, non vi sarebbe forse un solo governo legittimo in Europa, e la giustizia politica non potrebbe conciliarsi colla quieta degli Stati."—Gioberti, Introduzione allo Studio della Filosofia, l. i. pp. 102, 103.
sador at Rome, Cardinal Portocorrero, upon the 11th of January, 1753, another Concordat, which regulated till 1851 the relations between Spain and Rome.

By this instrument (i), the right of naming to vacant Bishoprics (Patronatos) in the kingdoms of Spain, Granada, and the Indies, which Rome had been for ever striving to obtain, and which Spain had always considered one of the first prerogatives of the Crown, was formally admitted to be belong to the latter. The Pope reserved to himself fifty-two specified benefices, and was to receive 22,000,000 reales as a compensation for the loss of fees on Briefs and Annates.

On the 16th of January, 1762, a Pragmatic Sanction was ordered by His Majesty to be published, "with the view of preventing, from this day forward, the circulation of any Brief, Bull, or Papal Letters, for the establishment of any law, rule, or general observance, unless they be ascertained to have been previously seen by his royal person; and of directing the Briefs or Bulls relating to transactions between private individuals to be presented in the first instance to the Council."

CCCLXVI. On the 16th March, 1851, a Concordat was concluded with Rome on terms more favourable to the Roman See (k) than she had hitherto obtained. The Roman Catholic Apostolical Religion, to the exclusion of every other form of worship, is to have the rights and prerogatives which belong to it according to the Law of God and the sacred canons (l). The possessors of Church property are quieted in their possession (m). The prerogatives of the Crown are retained, and also the Convention of 1753, except in so far as it is abrogated from by this Concordat (n).

(i) The Bull is printed in Spanish and English in the Parliamentary Papers, 1851.
(l) Art. 1.
(m) Art. 42.
(n) Art. 44.
CCCLXVII. The subject of the Papal relations with Spain must not be dismissed without observing, that, when the year 1768 had produced, as has been already mentioned, the famous Monitorio di Parma (o), nowhere was this attempt of the Pope to use spiritual power for secular ends more fiercely attacked than in Spain. It gave rise to two very important State papers, in both of which the pretensions of Rome with respect to issuing orders of any kind which were to take effect in a foreign territory without the consent of the Sovereign, were most distinctly repudiated, as contrary to the private law of Spain and the public law of Europe:—

1. The Royal Regulation of the Lords of the Council of His Majesty (p), whereby it was ordered that all copies of the Monitorium and all other writings, letters, or despatches of "the Court of Rome," infringing upon the royal prerogative or other rights of Government, or likely to disturb public tranquillity, should "not be allowed to be published or "printed; that, on the contrary, they are to be delivered "immediately to the Council, under pain of death against "the notaries and lawyers who act contrary to the present "regulation, and of the other penalties pronounced against "all other individuals in conformity with the dispositions "of the 25th law, tit. 3. lib. 1. of the collection of statues called Recopilacion, which is annexed." That law recites "that every day there are received in our kingdom regulations from the Court of Rome, derogatory to "their pre-eminence and the immemorial customs of the "country, and requiring a remedy," and then provides the penalty aforesaid (q).

2. The circular of the Minister accompanying the preceding edict and prohibiting the publication of the Bull under severe penalties. Precedents were cited extending from

(o) Vide ante, p. 408.
(p) Parl. Papers, p. 211.
(q) Ibid. p. 214.
1551 to 1766, in which Spain had resisted and considered "as affronts," for which "satisfaction" was to be demanded, all attempts of the Court of Rome to promulgate any instruments affecting the subjects of Spain without the consent of the Crown of Spain. "All these precedents" (says the 22nd paragraph of this State Paper), "with " many more that are not stated here, the constant tradition " of the learned in the law of the kingdom, and the practice " of its superior courts of justice, show evidently that the " reasons of the said monitory In Cæna Domini have no " force whatever in Spain, as far as they infringe upon the " independent authority of Sovereigns in temporal matters, " obstruct the functions of magistrates, facilitate the preten-" sions of the Court of Rome, and disturb the tranquillity of " the country to which the harmony of the State and the " Church is so greatly conducive."

CCCLXVII (a). On the 25th of August, 1859, a Concordat was arranged between Rome and Spain, which was solemnly ratified in 1860 (r). The Pope sanctioned the sale of Church property which had been effected by the disappropriating laws of 1855 in exchange for endowments secured to the clergy upon the public funds. Rome conceived that it had thereby secured the principle of the inalienability of Church property (s). This Concordat, in other respects, mainly confirmed that of 1851 (t).

CCCLXVII (b). In 1852 a Concordat was signed between the Pope and the President of the Republic of Costa Rica which provides: —

Art. 1. The same declaration as in the last Spanish Concordat as to the Roman Catholic Religion.

(s) Ib. 238: "On peut y voir la politique habituelle du Saint-Siège, qui consiste à transiger définitivement sur les faits en maintenant l'autorité du prince."
Art. 4. That the Sovereign Pontiff being the chief of the Universal Church, the Bishops, Clergy, and People may have free intercourse with him.

Art. 7, 8. A power of Nomination granted in return for Dotation.

Art. 14. "That, taking the times into consideration, civil "causes and temporal rights of ecclesiastics are to be tried "before lay judges."

Art. 20. That no obstacle be interposed to the erection of monasteries or nunneries.

Art. 23. Public prayer to be—

"Domine salvam fac rempublicam.

"Domine salvum fac Præsidem ejus."

Art. 26. All laws, &c., at variance with this Convention are annulled (u).

CCCLXVIII. The history of the Lusitanian Church and Kingdom presents pretty much the same picture as that of the other realms of Christendom, up to a certain epoch. Portugal is perhaps distinguished, among modern Roman Catholic countries, for the firmness with which it has repelled the attempts of Rome to infringe upon national independence.

Towards the end of the eighth century (x), after the expulsion of the Saracens, we find the clergy and people electing the Bishop, the Monarch consenting, the Metropolitan confirming, Provincial Councils or Popes resorted to in case of doubt. From the beginning of the fourteenth to the middle of the fifteenth century, the Pope had usurped the right not only of confirming but of nominating Lusitanian Bishops. About 1440, Dom Alphonso V. firmly established the royal right of presenting to the vacant sees, though for some time the Bulls of confirmation contained the phrase ad supplicationem and not ad presentationem. During the

(u) Annuaire des Deux Mondes, 1852.
See De Frail, Concordat de l'Amérique avec Rome. (Paris: 1827.)
(x) Parl. Papers, 1851, Portugal, Historical Memoir, p. 111.
time, however, that Portugal was under the Crown of Spain, the Spanish monarchs admitted no such limitation of their privilege; and afterwards when Portugal secured her independence, her Kings, Dom John IV. and V., steadily maintained this right; till at last Benedict XIV., by a decree of 12th December, 1740, determined that the appointment to all the cathedrals of Portugal should be "cum clausula, ad præsentationem regis" (y).

CCCLXIX. King Joseph issued an edict, dated 6th April, 1768, forbidding, under severe penalties, the importation and promulgation of the Bull In Cena Domini, and of the Indices expurgatorii. Various subsequent royal edicts to Nuncios, Cardinals, Patriarchs, and Abbots-General were issued, having for their object to prohibit the promulgation of Papal Briefs unsanctioned by the Placitum Regium; the same doctrine is repeatedly enunciated by the Portuguese publicists and jurists (z).

In 1815 (a) the attempt of Pope Pius VII. to re-establish, by the bull Solicitude omnium, the Jesuits in Portugal, was met by the firm and peremptory refusal of the Government, and by an expression of their determination to "maintain in their utmost rigour" municipal ordinances of a directly contrary tendency.

In 1822 the Pope's refusal to confirm the Episcopal nominee of the Crown produced the following significant remonstrance from Carvalho, the Minister of the Crown, addressed to the Portuguese Minister at Rome.

"If His Holiness should still persist in delaying the confirmation of the Bishop-elect as coadjutor and future successor to the Bishop of Coimbra, you will acquaint him, in the most formal manner, that His Most Faithful Majesty, while he holds the respect he owes to the Holy Apostolic See and to the Holy Father as a sacred duty, holds it..."

(z) Ibid. 1816-17, pp. 231-239.
(a) Ibid. pp. 244, 245.
a no less sacred duty to uphold the rights of his Crown—
rights which his august ancestors so often and so gloriously
upheld. If His Holiness should still persist in delaying
the confirmation of the Bishop-elect as coadjutor and
future successor to the Bishop of Coimbra, you will ac-
quaint him, in the most formal manner, that His Most
Faithful Majesty is firmly resolved to make use of the
right established by the fourth Canon of the Council of
Nice, ‘Episcopum oportet maxime quidem ab omni-
bus qui sunt in provincia constitui;’ and by the twelfth
Canon of the Laodicean Council, ‘Episcopi judicis me-
tropolitanorum,—a right which was confirmed by In-
nocent I. (Dis. 64, Can. 5), by St. Leo in his letter to
Anastasius of Cephalonia, by the seventh Council in the
second Canon, and finally understood and confirmed as
a general right in the Decretals of Gregory IX. His
Holiness is aware that Bishops have been thus confirmed
and consecrated for thirteen centuries; and, as the holy
Church of Jesus Christ neither did nor could change
character, the Bishops confirmed and consecrated now as
they were in those happy times, are as much Bishops, and
have the same jurisdiction and authority as they possessed
during these thirteen centuries. For the more prompt and
legal execution of this resolution, His Majesty even now
keeps vacant the Bishopric of Tangiers, which is in the
royal gift, as you yourself have lately observed.

Finally, you will inform His Holiness, that the abuse of
authority frequently occasions the adoption of measures of
expediency and emergency; and that should His Majesty
decide upon the confirmation and consecration of one Bishop
in this manner in his dominions, he will follow the same
course and the same doctrine of the Church with regard
to all bishoprics which he may have to bestow” (b).

This despatch was dated February 8, 1822. In a sub-
sequent despatch to the same minister upon the same subject,

(b) Parl. Papers, 1851, pp. 139, 140.
dated 13th March, 1822, Carvalho, after citing Van Espen as authority for the *jus commune* of the Church, and declaring that His Majesty was acting both "as the defender of the "canons of the Church" and also of "the rights of his Crown," concludes: "But if you see that the spirit of prepossession or "rather of discord is perceptible in the Vatican, you will "make use of the instructions which His Majesty directed to "be sent to you on February 8th of this year, protesting "against the innovation and the false doctrine of paying "more attention to a private letter than to legal testimonials : "and you will prepare a note, stating to His Holiness that "His Most Faithful Majesty renews his declaration of adhe-"sion and faithfulness to the Apostolic See, but that availing "himself of the rights of the general law (mas que utilisando-"se do direito commum) and of the best ages of Christianity, "he not only proceeds to the confirmation of the Bishops of his "kingdom by the Metropolitans, but determines that both the "one and the other shall grant the dispensations and the spi-"ritual favours which they may grant as the successors of the "Apostles and the depositories of the authority necessary for "supplying the wants of their Churches and flock; depriving "of his royal approbation all and any Bulls issued in Rome, "or here, by the Apostolic Delegate. Such are His Majesty's "orders to you" (c).

CCCLXX. The language of these instruments and their date are remarkable. In them, not only the superiority of the *jus commune* of the Catholic Church over the Pope, and the rights of the Crown are distinctly asserted, but, as appears in the last extract, a position is taken up scarcely, if at all, different from that which has been since the time of Henry VIII. occupied by the national Church of England.

CCCLXXI. There was till latterly no existing *Concordat*

---

(c) *Parl. Papers*, 1851, p. 143.

In the first despatch it is said: "His Holiness, in the present instance, has no right to judge unless secundum allegata et probata" (Sua Santidade no caso presente não tem direito de julgar, se não secundum allegata et probata).
between (d) Portugal and Rome. There appear to have been Concordats of Pedro I. and John I., but none of later date.

A Concordat was concluded February 21, 1857, not without much difficulty, chiefly on account of the patronage of the Indian Bishoprics (e).

CCCLXXII. We have now to consider the Papal relations with the Kingdom of the Two Sicilies (f). By a Bull, dated A.D. 1096, Pope Urban II. created Roger, Count of Calabria and Sicily, perpetual Legatus of the Roman See,—a distinction which was transmitted to all monarchs of the Two Sicilies.

By a Bull (g) of 1139, Innocent II. confirmed the act of his predecessor, whereby the Kingdom of Sicily, the Duchy of Apulia, and the Principality of Capua were conferred, as a feudal tenure, upon Roger II.

CCCLXXIII. This tenure continued till a very late period. For six centuries the white palfrey (chinea) and 7,000 golden ducats had been claimed, and generally obtained, by the Popes as the mark of the feudal homage due from the Crown of the Two Sicilies.

It was not till the year 1776 that Ferdinand (the First (h) of Naples) availed himself of a quarrel which arose

(d) Parl. Papers, 1851, p. 108.
The originals are said to be in the Royal Archives of Torre de Tombo, and to be found in Gabriel Pereira de Castro’s Monomachia, at the end of his first Treatise, De Manu Regia.
See also Ann. des D. M., 1862-63, p. 301, for an account of a further struggle between Portugal and the Pope.
See also Hertslet’s State Papers, vol. I. p. 1294. There seems to have been an earlier Concordat, in 1848, October 21.—Tétot, Répert. des Traités.
(f) Schmauss, i. 1: “Nullum in terra potestatis vestre, præter voluntatem aut consilium vestrum Legatum Romane Ecclesie statuemus.”
The conquest of the Saracens and the aid borne to the Church are assigned as the meritorious cause of the extraordinary power.
(g) Ibid. 1.
(h) Sometimes called Ferdinand IV.
during the ceremony of presenting these gifts, between the Ambassador of Spain and the Governor of Rome, altogether to get rid of this homage (i).

Lamenting that an act of devotion towards the Holy Apostles should have given rise to a public quarrel, he announced, or rather his able minister Tanucci announced, that henceforward the ceremony of presenting the palfrey should altogether cease, and that the ducats should be privately presented as the free gift of a devoted son of the Church.

Rome protested (k) then, and, it is said, protests now, against this act of disobedience.

CCCLXXIV. The Two Sicilies, after the expulsion of the Angevin race, followed the policy of the Arragonese, Austrian, and Spanish kingdoms, to which, until the middle of the last century, they were successively appended (l).

The Spanish Viceroy refused to give the Royal Exequatur to the promulgation of the Council of Trent; and though the decrees of that Council were allowed to be dispersed over the kingdom, orders were sent to the President and other officers of the kingdom to suffer no innovation to be introduced injurious to the royal prerogative.

The Bull In Cæna Domini was as stoutly resisted, and the necessity of the Regium Exequatur (m) as steadily maintained as in other countries.

(i) Colletta, Storia del Reame di Napoli, l. 2. xiii.

(k) "E il Papa rifiutandoli, dichiarò più che mai solennemente le sue ragioni e la disobbedienza (così la diceva) della corte di Napoli."—Colletta, Storia del Reame di Napoli, l. 2. xiii.

(l) The House of Anjou reigned at Naples about 160 years after they had been expelled from Sicily. Alphonso of Arragon first took the title of King of the Two Sicilies A.D. 1442-43.—Giannone, l. xxv. c. 7.

(m) In the thirty-third book of his History, Giannone devotes chap. iii. to the disputes about the reception of the Council of Trent; in chap. iv. he discusses the reception of the Bull In Cæna Domini, in chap. v. the necessity of the Exequatur Regium for all mandates from Rome; but see more especially the sixth chapter of the fortieth book, for the account of the strenuous maintenance by Charles VI. of the Regium Exequatur.
CCCLXXV. In 1728 Benedict XIII. decreed that the service in honour of Pope Gregory VII. should be performed by the secular and regular clergy. The decree was reprinted and published at Naples. The Secretary of State (n) reported to the Emperor Charles VI. that he had found, in the service ordered to be used, these words: "contra Henrici imperatoris impios conatus fortis per omnia athleta impavidus permansit, sequo pro muro domui Israel ponere non timuit, eundem Henricum in profundum malorum prolapsum fidelium comminione regnoque privavit, atque subditos populos fidei ei data liberavit." The meaning of these words," continues the Secretary of State, "appearing to me too injurious to the authority of Princes, too favourable to seditions, and contrary to the tranquillity of the State, I thought it right to leave the business to the Delegate of the Royal Jurisdiction, that he might lay it before the Court, as he did in my presence, where the import of the said words having been duly weighed, they were easily perceived to betray the vast design harboured by the Court of Rome, to attempt to make itself a Sovereignty over all the temporal Princes, and to render them, as it were, its subjects and dependants, so that the Papal Court might deprive Kings of their kingdoms, and transfer them to whomsoever it liked best—a strange and unjust conceit, directly contrary to the institution of the Pontificate. . . . The serious and intolerable evils accruing to the independence of Princes in general, and to your Majesty's imperial and royal rights in particular, from the publication of the aforesaid lessons, would authorise us, in imitation of the usages and the prudence of the Court of Rome, to prohibit the lessons themselves, charg-

against Clement XI.: "Stabilif ermannente la necessità del Regio Exequatur in tutte le Bolle, Brevi, o altre provisioni che vengono da Roma." This was vehemently condemned by Clement XI., but acquiesced in by his successor, Innocent XIII.

(n) Consultation of the Secretary of State, &c.
ing the Bishops not to insert them in the Breviary. But," continues the Secretary, alleging various reasons, "it is thought more advisable simply to order the printers to be confined, and all the copies of the said lessons to be seized, for no other ostensible motive than because a foreign publication had been imported, reprinted, and sold without any previous licence, contrary to the royal regulations, and particularly, because the reprint is said to have taken place with the permission of the magistrates, when no such permission had been granted." (o)

CCCLXXVI. (p) In 1761 the Secretary of the Delegates of the Royal Jurisdiction at Naples, referring to what had been done in 1728 (q), prohibited in the kingdom the use of ordinarii (prayer-books) which contained directions for reading the service to Gregory VII., and the Bull In Cæna, and what were called "casus reservati Eminentissimo et Reverendissimo Domino."

In 1769 Ferdinand I., by the advice of Tanucci, would not allow the Papal (r) confirmation of the Archbishop of Naples to contain the words, "Per grazia della Sede Apostolica." Shortly afterwards, the Pope refused to consecrate the Bishop nominated by the Crown to the See of Potenza, and persisted in the refusal till the King wrote to him that, if the consecration should be longer delayed, he would cause each new Bishop, in every province of his kingdom, to be consecrated by three existing Bishops, according to the ancient practice of the Church.

CCCLXXVII. (s) The last Concordat (t) between Rome and the Two Sicilies bore date the 16th February,

---

(o) Parl. Papers, 1816-17, pp. 151-4.
(p) Ibid. p. 156.
(q) Consultation of the Marquis Nicolas Fraggiani, &c.
(r) Pius VI.
(s) Parl. Papers, 1851, pp. 274-278, where it is set out.
(t) A Convention, which I have not seen, is said to have been drawn up in 1838.
1828; the 29th article of which contained the following oath:—

"I swear and promise, on the holy Gospels of God, obedience and allegiance to His Royal Majesty; and I also promise that I will have no communication, that I will not partake in any design, that I will maintain no suspicious connection, either at home or abroad, which may endanger public tranquillity; and that if I am aware that any machination is being carried on, whether in my diocese or elsewhere, to the disadvantage of the State, I will make the same known to His Majesty" (a).

CCCLXXVIII. With respect to the Kingdom of Sardinia, the Dukes of Savoy appear to have had, like other Sovereigns, contests with the Pope at an early period (x). The earliest document relating to that part of the Regale which concerns the nomination to bishoprics in the kingdom of Sardinia, is a Brief of Nicholas V., in which he promises Louis II., Duke of Savoy, never to institute any persons to any archbishopric, bishopric, or abbey, "nisi habitis prius per nos intentione et consensu ipsius Ducis" (y).

CCCLXXIX. The right of Royal Domination was further confirmed by a Brief of Leo X., in 1515, in the text of which the above expressions of Nicholas V. were referred to, and by the Brief of Clement VIII., on the 19th of June, 1595, to Duke Charles Emmanuel. There are also Briefs of Sextus IV., Innocent VIII., and Julius II., restricting and prohibiting the nomination of strangers to benefices in Sardinia.

The royal privileges were admitted, by a Brief of Innocent XII. on July 31, A.D. 1700, to extend to the

(a) Part. Papers, 1851, p. 287.

(x) Ibid. 1816–17, 1851. Six volumes of treaties between the House of Savoy and Foreign Powers are referred to.

(y) "Neminem preficiemus seu illis (alluding to archbishoprics, bishoprics, abbey) de quorumcumque personis non providemus nisi habitis prius per nos intentione et consensu ipsius Ducis, de personis idoneis ad hujusmodi regimen seu dignitatis promovendis, vel de quorum personis tales provisiones faciendae."
dominions of the House of Saxony, south of the Alps. This was in the reign of Victor Amadeus, the first King of Sardinia.

CCCLXXX. By three successive Concordats of 1727, 1741, 1750 (z), the Regale was further confirmed, and extended to Churches formerly excepted; and the claims of the Roman Curia to the revenues of vacant benefices, and to the property of deceased clergymen, were abandoned. In 1728, the civil and ecclesiastical rights were clearly defined by Victor Emmanuel, in the Code Vittorina, notwithstanding the opposition of Clement XII.

CCCLXXXI. By the Regulations of 1770 (s. 6. c. 1), it is provided that the nominations made by the Crown to the higher or consistorial dignities, and which have been sent to Rome, shall be expedited by the Secretary of State for Foreign Affairs: the patents of collation to any ecclesiastical office shall be expedited by the Secretary of State for the Home Department. In 1831 a Minister for Ecclesiastical Affairs was appointed, and upon him are now devolved the ecclesiastical duties of the Home Secretary (a).

CCCLXXXII. By a Royal Decree of 21st December, 1850 (s. 7. Article 2), it is provided that the Council of Ministers shall deliberate on the propositions relating to archiepiscopal and episcopal sees, and that the Minister for Foreign Affairs shall carry on all ecclesiastical negotiations with Rome.

CCCLXXXIII. As to the form of nomination to the Pope, the King's representative at Rome used to deliver to His Holiness the Royal Letter announcing the individual nominated to the vacant see. Formerly these letters contained the expressions "in virtù" or "in forza del diritto

(z) Confirmed by a Brief of 11th June, 1791.
(a) By the 18th Article of the Constitution, the Crown exercises the rights of the civil power in the matter of benefices and nominations.

By s. 1. of Article 6 of the Royal Decree of 21st December, 1860, the royal patronage belongs to the Minister for Ecclesiastical Affairs, Grace, and Justice.
'che ci compete, nominiamo,' &c.; but now the simpler form, "abbiamo nominato come nominiamo il —— alla vacante mitra," &c. They conclude with a request that the Pope will order the necessary provisions (providenze).

CCCLXXXIV. The right of the Exequatur had been always carefully maintained in Sardinia.

The most ancient history of this country has records of the necessity of the approval by the civil power of the provisions of the Roman See. The inspection of these documents was at first entrusted to the Governors, afterwards to the Supreme Courts of Justice or the Senates. The instructions to these bodies were that no Bull, Brief, Letters, or Decree should be published or executed until it had been presented for the Exequatur. Notaries were strictly forbidden to exercise their calling in the way of recording or authenticating any provision proceeding from Rome, for which the Exequatur had not been obtained. The right of the Exequatur was, moreover, recognised by Benedict XIV. in his Concordata, "Istruzione Pontificia" of 1742, which had reference to the Concordat of 1727.

In 1787 a Sardinian agent was established in Rome, according to the example of other Courts, with a royal office, through the agency of which, all petitions, without exception, of Sardinian subjects, for provisions which were to have effect "nel foro esterno," were to be obtained. When Genoa was annexed to the Sardinian monarchy, the Legation of Piedmont was extended to this new acquisition.

And lastly, by the Decree of April 25, 1848, all provisions from Rome must receive the Royal Exequatur before they can be considered by the tribunal, or executed by the prelate or any party charged therewith. The only exceptions appear to be provisions respecting matters purely spiritual, such as dogmatical Bulls, indulgences, jubilees, &c.

CCCLXXXV. The ancient Florentine Republic (b), the

(b) Parl. Papers, 1816-17, p. 109.
Ibid. 1851, p. 329.
Government of the Medici, and of the Austrian and Bourbon family, have been in succession equally watchful to prevent any infringement of the sovereignty of the State by the act of any foreign Power.

CCCLXXXVI. Under this category they appear always to have considered the exercise of Papal authority within their dominions, which has been regulated by a series of laws issued by the sovereign authority of the State, and which have been constantly enforced; and the necessity of the Regium Exequatur has been maintained in Tuscany with great vigilance (c).

CCCLXXXVII. On the occasion of the vacancy of an episcopal see, the Sovereign of the Grand Duchy used to cause a list of four candidates to be presented to the Pope, with an understanding that the first must be chosen, even if he be not duly qualified.

This custom appears to be immemorial, and to have been sanctioned by various pontifical Briefs. Every subject of the Grand Duke had to obtain the permission of the Government previously to applying, in any matter of ecclesiastical jurisdiction, to the Pope; and every Brief or Decree obtained in consequence of the application had to be sanctioned by the Placet or "Regio Exequatur" of the Sovereign, without which no Papal Brief, Bull, or Decree had any judicial validity in any civil or temporal matters.

CCCLXXXVIII. No State ever more strictly resisted the Papal authority than Venice (d). She excluded ecclesiastics from the councils and public employments of the State. The Government of her Church was divided between the patriarchates of Venice and Aquileia.

When Sixtus IV. excommunicated Venice (e), the Council of Ten ordered the Patriarch and all the Venetian clergy to transmit, unopened, to the inquisitors of the State any Bull

(c) See especially the Circular Letter of Duke Leopold, 25th October, 1797.
(d) Parl. Papers, 1816-17, p. 106.
that might be addressed to them by the Holy See. These commands were strictly obeyed. An appeal was lodged with the tributary Patriarch to a future Council, from the sentence of excommunication. The Patriarch, in consequence of the appeal, suspended the interdict, and sent a summons to the Pope to appear before a future Council.

In 1754 the Venetian Senate put forth a decree forbidding the publication of any Bull; and in the same year expressly prohibited Venetians from applying to Rome for any dispensation which could not be obtained through the Bishop, and from applying at all to Rome except through the Bishop (f).

CCCLXXXIX. With respect to Bavaria, the treaty which regulates the relations between that kingdom and the See of Rome is the subsisting Concordat of 1817 (g).

It begins as follows:—"Sanctitas sua Summus Pontifex " Pius VII., et Majestas sua Maximilianus Josephus Ba-" variae Rex, debita sollicitudine cupientes, ut in iis quæ ad " res ecclesiasticas pertinente certus stabilisque in Bavariæ " regno terrisque ei subjectis constitutur ordo, solemnem " propterea conventionem inire decreverunt."

It provides for the nomination of Bishops by the Crown to be followed by the confirmation of the Pope, and that the prelates shall take the following oath on their installation:—

"Ego juro et promitto ad sancta Dei Evangelia obedien-" tiam et fidelitatem Regiae Majestati: item promitto me " nullam communicationem habiturum, nullique consilio " interfuturum, nullamque spectam unionem neque intra " neque extra conservaturum quæ tranquillitati publicæ " noceat, et si tam in Diocesi mea quam alibi noverim " aliquid in Statuæ damnnum tractari, Majestati suæ mani-" festabo."

(f) Parl. Papers, 1851, p. 47.
(g) Eichhorn, Kirchenrecht, B. iii. Abschn. i. 11, p. 564.
Contemporaneously with this Concordat was promulgated what is called the "Religion Edict" (h) in the Bavarian Constitution (Part 3, pars. 58-9), containing these provisions:

"58. In conformity to the general mandates hitherto existing in the royal dominions, no laws, ordinances, nor other regulations issued by the Church shall be promulgated and carried into effect without the sovereign concurrence and sanction. The clerical authorities are bound, after receiving the royal sanction for the promulgation (placet), to state the same expressly on all occasions, at the outset of the publication of the ordinances issued by them.

"59. Public notices issued by the clerical Government, which refer solely to the priesthood under its authority, and which emanate from approved and universal regulations, require no renewed sanction. This placitum regium is accorded by the King."

In 1824 these provisions were revised and extended (i).

The gradual absorption of the various independent States of Italy into the one Kingdom (k) of Italy has taken place since the first edition of this work was published. They have been so incorporated by the wish of the subjects of such sovereignties, so far as that wish can be ascertained by the process of a plebiscite. The people of the Roman States, finding that no civil reforms for securing their liberties could be obtained, have, in the exercise of their

(h) This Concordat will be found in the Appendices to the works of Eichhorn and Phillipps, and in the Parl. Papers of 1851.

(i) See a remarkable paper—The Circular of Prince Hohenlohe to the Bavarian Ministers, dated the 9th of April, 1869, as to the Council of the Vatican—p. 139 of Offizielle Aktenstücke.

Questions submitted thereupon by the Bavarian Government to the Catholic Universities of Munich and Wurzburg, p. 140.

Answer of the Munich Theological Faculty, p. 141.

Memorandum of the Minority of the Munich Theological Faculty, p. 166.

(k) Vol. i, ed. 2, p. 530.
rights as freemen and Christians, opposed their doctrine of *possimus* to that of the *non possimus* of the Pope. (l) The question is, speaking generally, one chiefly of Public or Constitutional Law, but having nevertheless an International aspect which deserves notice in this place.

Cavour (m), in his note of 1860, addressed to the Sardinian Minister at Berlin, justified the incorporation of these States,


See letter of 20th May, 1862, of Napoleon III. to M. Thouvenel, expressing the hope that the Pope would reconcile his rule with modern ideas.

"L'intérêt du Saint-Siège, celui de la religion, exigent donc que le Pape se réconcilie avec l'Italie, car ce sera se réconcilier avec les idées modernes, retenir dans le giron de l'Église 200 millions de Catholiques et donner à la religion un lustre nouveau en montrant la foi secondant les progrès de l'humanité."

On the 11th July, 1871, M. Lemoine writes: "Le manifeste de M. le comte de Chambord est d'une orthodoxie irréprochable. Ce n'est point sans raison que nous avons cru pouvoir comparer ce langage à celui du *Syllabus*. Chez la Royauté comme chez la Papauté, c'est la même affirmation absolue: c'est sur les deux drapeaux, ou plutôt sur le drapeau commun, la même devise, *sint ut sunt, aut non sunt*.

"Le tout ou rien peut encore se comprendre dans les questions de dogme, celles qui se disent du domaine surnaturel. Dans les questions d'affaires humaines, d'affaires politiques, c'est la devise des révolutions. De même que par la proclamation de l'insaillibilité le Pape a mis les chrétiens dans l'alternative du servilisme ou de la séparation. Henri V, en arborant le drapeau bleu, vient de mettre les Royalistes dans le même douloureux dilemme. Sans doute il a su ce qu'il faisait, et il a voulu le faire: nous ne pouvons que constater."—John Lemoine.—*Journal des Débats*, 11th July, 1871.

(m) "En effet le droit public de tous les temps a reconnu à chaque nation la faculté de régler ses propres destinées, de se donner des institutions conformes à ses intérêts, de se constituer, en un mot, de la manière qu'elle juge la plus propre à sauvegarder la sécurité et la prospérité de l'état. Ce droit n'a jamais été dénoncé comme contraire aux lois internationales. Il en est même le fondement, car s'il était méconnu ou violé, il n'y aurait plus en Europe ni indépendance ni liberté."—*Ann. des Deux Mondes*, 1860, p. 771.


*The Pope's Answer*, 2nd April, 1860.—*Protest against the Usurpation*
and what has been called the unification of Italy, on two grounds: first, on the ground that International Law always respected Public Law, and that by that law all States possessed, and had exercised, the right of choosing the Government which they thought most expedient for themselves; secondly, on the ground that, though these minor Italian States had been conferred, so to speak, on certain Houses or persons, such treaties had been always subject, after the lapse of time, to revision; thirdly, on the ground that all attempts at conciliation, and at obtaining good government for the people, had been tried in vain with the Papacy and the Kingdom of the Two Sicilies, as well as with the lesser States of Central Italy (n).

which is being accomplished, to the loss of the States of the Church,” &c. Ibid. pp. 280, 281.

September 7.—Cavour to Antonelli, complaining of foreign mercenary troops in the service of the Pontifical Government.

Antonelli replies, “... lawful to have foreign troops, a practice existing indeed at the present moment in many European States,” and appeals to the Law of Nations, “under whose regia Europe has lived.”

Victor Emmanuel's Address to the People of Southern Italy. Ibid. p. 290.


(n) Upon the question of the necessity of a temporal sovereignty to secure the independence of the Pope, Cavaliere Bencompagni says, with much truth and force (Discorso della Cam. dei Dep. p. 9): “Ad assicurargli questa independenza, era stato instituito, dicevano essi, lo Stato del Pontefice. Questa Sovranità faceva parte del diritto pubblico d’Europa, era riguardata come in guarantigia del Pontificato. Quali elementi concorrevano in questa Sovranità? Quali erano tra cotesti elementi quegli che assicuravano l’indipendenza del Pontefice? Il Pontefice aveva un territorio, ed aveva dei sudditi: questo territorio e quei sudditi assicuravano forse quella libertà d’azione, che tutti i Cattolici, senza eccezione, erano disposti a consentirgli? Quella libertà d’azione che il Parlamento Italiano, prima la Camera dei Deputati, poi il Senato, solemnemente a dichiarato di volergli mantenere? era forse il territorio, erano forse i sudditi che l’assicurassero? No; anzi il possesso di quel territorio, la dominazione su que’ sudditi, facevano sì che il Vescovo di Roma, capo della Chiesa cattolica, fosse in una condizione peggiore di tutti i vescovi della cristianità: egli solo non poteva restare nella sua sede, se non aveva attorno a sè una soldatesca straniera che imponeva la sua
INTERNATIONAL LAW.

The last territory of the Pope (o) has now been added to the Kingdom of Italy. The immediate consequence of this great event has been the establishment of Rome, the City of the World, as the capital of the new Kingdom of Italy (p). This very important fact has necessitated a new arrangement respecting the Papacy, both with regard to the substantive and separate status of the Pope and the relative and, so to speak, mixed status of this great Religious Latin Power, with regard both to the Kingdom of Italy and also to those other States of Christendom (q) which acknowledge, with more or fewer, greater or less limitations, his spiritual authority in their territories.

The Pope himself maintains that no part of his territory has ceased de jure to belong to him. On the 26th of March,

signoria al popolo Italiano." Cf. with Antonelli's letter as to the necessity of temporal dominion to the Pope, Parl. Papers, 1870-1, p. 108.

(o) Correspondence relating to Rome laid before Parliament, 1870-1. French troops recalled, 2nd August, 1870.


P. 59. Plebiscite of Rome and the Provinces.

Pp. 83, 84. French Republic. M. Senard to King of Italy: "Convention of 15th September, 1864, has virtually ceased to exist, 22nd September, 1870."

(p) Vittorio Emmanuele II. was proclaimed King of Italy by a vote of the Italian Parliament, 14th March, 1861. (Ann. des D. M. 1861, p. 175). The first Council of Italian Ministers under the King in the Quirinal Palace at Rome was holden 3rd July, 1871.

(q) Belgium.—Brussels: 3rd July, 1871.—In to-day's sitting of the Senate Baron Anethan, answering to a question of which notice had been given, said: "As regards the removal of the Italian Government to Rome, the Belgian Government was not called upon to express approval or disapproval of the Italian occupation of that city. All we had to do was to follow the usual diplomatic customs. The Minister for Foreign Affairs gave instructions to the Belgian representative at Florence to follow the King of Italy, wherever he might go to establish his capital. Belgium will have two legations in Italy, one accredited to the King and the other to the Pope."

The Senate then adopted the following order of the day: "The Senate, satisfied with the explanations of the Minister for Foreign Affairs, passes to the order of the day."

This course has been, directly or indirectly, adopted by other States.
1860 \(r\) he issued a Bull of excommunication against all persons who had taken any part in despoiling the Holy See of the Patrimony of St. Peter, and he entirely refuses to recognise the \textit{de facto} authority over or possession of these territories by the King of Italy \(s\).

He does not recognise the new Kingdom of Italy, and speaks of it as the Sub-Alpine or Sardinian Government when he is compelled in any public act to make any mention of it, and he treats with contempt the Statute of Papal Guarantees.

The recent arrangement, therefore, that has been made is at present unilateral—that is, on the part of the Italian Government only. It is, however, fraught with most important consequences to Italy and Europe.

The new statute on this subject which became part of the Italian law on the 13th May, 1871, is divided, as will be seen in the following slight sketch, under two heads:

1. The prerogatives of the Pope and of the Holy See \(t\).
2. The relations of the State with the Church \(u\).

Under the first head the inviolability of his person and the marks of honour due to a Sovereign are secured to him. A large dotation or income, and various residences are

\((r)\) March 26, 1860. Letters Apostolic of His Holiness Pius IX. pronouncing the major excommunication against the invaders and usurpers of the Pontifical State (Ann. Reg. 1860. Public Documents, p.273): "In the fraudulent and perverse machinations of which we (the Pope) complain, the foremost actor is undoubtedly the Sardinian Government." (p. 274.)

\((s)\) I do not think that the possession of Avignon has ever been formally recognised by the Pope, or the claim with respect to it abandoned.

\((t)\) The deputy Mordini appears to have moved (16th Feb. 1870), when this statute was under discussion: "La Camera dichiara che i principii e le disposizioni contenute nella presente legge non debbono formare soggetto di patti internazionali e passa alla discussione degli Articoli."

\((u)\) The deputy Corte appears to have moved, as an addition to the first article, as follows: "La presente legge non è applicabile che a quei cittadini i quali dichiarano di professare la religione cattolica romana." Neither of these propositions seems to have been carried.—See XVI. Sessione, 1870-1, prima della XI. Legislatura. Camera dei Deputati, 16 Feb. 1870.
allocated to him. He is allowed to receive diplomatic agents from Foreign States, and to send such to them, clothed with all the immunities incident by International Law to the office of ambassador.

Private postal and telegraphic communication are accorded to him, in order that he may freely communicate with the Episcopate and the Catholic world.

Under the second head, all legal restrictions on the assembling together of the Catholic Clergy are taken away, the peculiar rights of the Crown in Sicily relative to ecclesiastical matters are abandoned: bishops are no longer to swear allegiance to the King. The exequatur and royal placet are for the most part abolished. In matters of spiritual and ecclesiastical discipline there is to be, on the one hand, no interference on the part of the civil power, on the other hand, no coercive jurisdiction (esecuzione coatta) is conceded to the spiritual authority, and all acts done by that authority contrary to the laws of the State or public orders, or injurious to the rights of individuals, are null, and in certain cases may be punishable by the penal laws. This Statute of Papal Guarantees is not an International Pact but a Constitutional Statute of the Italian Kingdom. No other State is a party to it.

On the 7th of June, 1871(x), a further statute was enacted altering certain articles of the existing penal code with respect to the Clergy, but enacting stringent provisions against those who, by word, writing, or deed, incite disobedience to the law of the State.

No Roman Catholic, Catholic, or Protestant State has impugned the authority of the Statute of Guarantees, or proposed or threatened to intervene, as Austria and France have formerly done, in the affairs of Italy, in order to maintain the territorial and temporal status of the Papacy.

Although this intervention has been loudly invoked in the circular of Cardinal Antonelli in 1859 to the Foreign

Courts (y), and was repeated in the Papal Encyclic, May 15, 1871—"Efficiet Deus ut Principes terræ, quorum maxime "interest ne tale usurpationis quam Nos patimur exemplum "in perniciem omnis potestatis et ordinis statuatur et vigeat, "una omnes animorum et voluntatum consensione jungantur, "ac sublatis discordiis, sedatis rebellionum perturbationibus "disjictis exitialibus sectarum consiliis, conjunctam operam "navent ut restituatur huic S. Sedi sua jura et cum iis "visibili Ecclesiae capiti sua plena libertas, et civilis societati "optata tranquillitas"—and in a subsequent Encyclic, June 4, 1871—the Pope records with pleasure, how, when driven out of Rome, he was replaced, not by the Romans, or his subjects, but by the armed force of Catholic Princes.

He then speaks of "a powerful neighbour" having sur-
passed the impudence of the Prodigal Son in the Gospel by
having taken possession of Rome (z).

(z) As to the relations of the Papacy with Foreign Governments, the kingdom of Italy, and the annexation of Rome to it, see:
Report from Committee on regulation of Roman Catholics in Foreign
Countries, 1816-17, reprinted in 1852.
Report of the Select Committee appointed to inquire into the state of
Ireland, 1825 (especially the examination of the Right Rev. James
Doyle, D.D. and the Most Rev. Dr. Murray).
Correspondence respecting the Relations between Foreign Govern-
ments and the Court of Rome, 1851.
Correspondence respecting the Affairs of Rome, 1870-71.
The reports of the Debates in the Camera dei Deputati, and in the
Senato del Regno, published at Florence, 1870-71.
Documenti Diplomatici relative alla Questione Romana, comunicati dal
Ministro degli Affari Esteri (Visconti Venosta), nella tornata del 19
Decembre 1870.
The Gazzetta Ufficiale del Regno d'Italia, May 15, 1871, contains the
statute which governs the future relations of the Papacy with the Italian
Kingdom.
The Gazzetta Ufficiale of the 6th June, 1871, contains a further law as
to the relations of the priesthood with the Italian civil authorities and
Government. See also Il Rinnovamento Cattolico, An. 1, 21 Giugno 1871.
Le Guarantigie alla Sede Pontificia. Discorso pronunziato dal Cavaliere
Boncompagni nella Camera dei Deputati addi 25 Gennaio 1871. Firenze.
VOL. II.
CHAPTER VIII.

THE INTERNATIONAL RELATIONS OF THE PAPACY WITH FOREIGN STATES IN WHICH A PROTESTANT CHURCH IS ESTABLISHED—BULLÆ CIRCUMSCRIPTIONUM (a).

CCCXCI. The territorial changes in Europe (b), and, indeed, in the world, which followed upon the Treaty of Vienna, brought the Roman See into immediate contact with Protestant States, with which it had hitherto had no relations. By that treaty, territories inhabited for the most part by Roman Catholics, accustomed to acknowledge the supremacy of the Pope as an indispensable part of their religious belief, were transferred to Sovereigns who had always considered the rejection and denial of his authority as necessary for the political and religious welfare of their dominions. Rome had no longer to deal exclusively with those Princes who bore, as their proudest distinctions, the religious titles which she had conferred upon them. Her intercourse was no longer to be confined to His Most Christian Majesty, The Catholic King, His Most Faithful Majesty, or His Apostolical Majesty.

The Duke of Muscovy, whom Rome had not long ago regarded with Chinese indifference as an outer barbarian, had become one of the most powerful European potentates, uniting to his ancient title of Chief of the Greek Church, that of Protector of ten millions of Roman Catholic Poles.

(a) De Pradt, Les Quatre Concordats, t. i. Avant-propos.
(b) Walter, ss. 42, 43, as to the Greek Church.
The King of Prussia (c), whom fifty years ago Rome had still addressed as the Marquis of Brandenburg, had grown into a powerful monarch in fact as well as name; and had added to his compact military State two ecclesiastical electorates, besides Prince bishoprics, abbeys, and chapters.

The Protestant Stadtholder of Holland had become possessed of that ancient inheritance of the Catholic Sovereigns, the Belgic provinces, and of the Prince Bishopric of

(c) On the 24th August, 1870, the following correspondence took place between the Pope and King William of Prussia:—

Letter from the Pope.

Your Majesty,—In the present grave circumstances it may perhaps appear to you an unusual thing to receive a letter from me; but as Vicar on the earth of the God of peace, I cannot do less than offer you my mediation. It is my desire to witness the cessation of warlike preparations, and to put a stop to the evils which are their inevitable consequence. My mediation is that of a sovereign who, in his quality of king, can, by reason of the smallness of his territory, inspire no feeling of jealousy, but who nevertheless shall inspire confidence by the moral and religious influence which he personifies.

May God lend his ear to my wishes, and listen also to those which I form for your Majesty, to whom I desire to be united in the bonds of mutual charity.

The Vatican, July 22, 1870.  

Pius, P.P. IX.

P.S.—I have written in the same terms to His Majesty the Emperor of the French.

Answer of the King of Prussia.

Most August Pontiff,—I have not been surprised, but profoundly moved, in reading the touching words traced by your hand to cause the voice of the God of peace to be heard. How could my heart refuse to listen to so powerful an appeal! God is my witness that neither I nor my people have desired or provoked this war. In obeying the sacred duties that God imposes on sovereigns and on nations, we take up the sword to defend the independence and the honour of our country, and we shall ever be ready to lay it down at the moment that those treasures are safe guarded. If your Holiness could offer me, on the part of him who has so unexpectedly declared war against us, the assurance of sincerely pacific dispositions, and guarantees against the repetition of a similar attempt against the peace and tranquillity of Europe, it will certainly not be I who shall refuse to receive them from the venerable hands of your Holiness, united as I am with you by the bonds of Christian charity and of a sincere friendship.

William.
Liége. Passing by, therefore, the revolutions of Roman Catholic Southern America, in Europe alone a new order of things had arisen, to which the application of Papal claims was a matter of great novelty and nicety, not the less so on account of the remarkable circumstances connected with the Pope himself. For he did not pretend to be ignorant of a fact patent to the world, namely, that his restoration to Rome was mainly owing to the energies and the arms of schismatical and heretical powers; that Russia and Prussia—and, above all, excommunicated England—had been the principal instruments in reseating him upon the pontifical throne, from which he had been dragged by Roman Catholic France.

CCCXCII. The first remark which is of importance, the object of this work being considered, is, that the Papal See has entered into no convention, strictly speaking, with any Non-Roman-Catholic State. Before the year 1850, the only Concordat since the Treaty of Vienna which had been entered into was one with Bavaria \((d)\) in 1817.

The communications between the Roman See and the Protestant States of Germany have assumed the form of edicts on the part of the Pope, with respect to the creation, restoration, and general adjustment of dioceses, entitled "Bullæ Circumscriptionis;" and on the part of the State a recognition of these Bulls in a domestic law or statute subsequently promulgated.

CCCXCIII. \((e)\) To this adoption of the regulations of Rome by the placet of the territorial power, German jurists are careful not to ascribe that binding power, for the future, which is inherent in a Treaty or Concordat. The acts of the State, which clothe these Papal Edicts with the cha-

\[(d)\] Eichhorn, Kirchenrecht, I. Band, B. ii. Abschn. ii. c. 1.

\[Phillipps, Kirchenrecht, 3, 523, for the status of the Roman Catholic Church, generally, in Germany.\]

\[(e)\] Vide Eichhorn, supra.

\[Klöber, Oeffent. Recht des Deutschen Bundes, Th. 2, s. 420.\]

\[Phillipps, 3, 677, 678, 679, complains of this construction.\]
racter of municipal law, emphatically recite that their force, as such, is derived from the Sovereign who promulgates them; and the Bulls relating to Prussia and Hanover recited that they had been framed with the acquiescence and consent of the Sovereign.

CCCXCV. The Bulla circumscriptionis for Prussia is known by the title "De Salute" (f), the words with which the instrument begins; it was accompanied by a letter beginning "Dilecti filii." In both documents the approbation of the King of Prussia was recited. This Bull was sanctioned by a cabinet order of the King of Prussia (g).

The Bulla circumscriptionis for Hanover bore date the 26th March, 1824, and begins, "Imperio Romanorum Pontifícium;" it recites that Pius VII. had considered the matter, and proceeds, "re propterea collata cum Serenissimo Georgio Quarto regnorum Magnæ Britanniae et Hiberniæ unitorum necnon Hannoveræ Rege," &c. This Bull was

(f) The Bull is given at length in the Appendices to Eichhorn and Philippus, and in the Parl. Papers. See below.

(g) Whereas the Papal Bull submitted to me by you, which begins with the words 'De salute animarum,' and is dated Rome, the 16th of July of this year (xvii. Cal. Aug.), agrees in its essential contents with that arrangement which was entered into on the 25th of March of this year respecting the establishment, endowment, and limits of the archbishoprics and bishoprics of the Catholic Church in the State, and of all subjects having reference thereto, and which was already sanctioned by me on the 9th of June of this year, I will hereby give, on your proposal—also to the essential contents of this Bull, namely, to what concerns the enactments respecting things having reference to the before-mentioned subjects—my royal approval and sanction, by virtue of which these enactments are to be observed as the binding statute of the Catholic Church of the State, by all those whom it concerns.

"This, my royal approval and sanction, I give in virtue of my sove-
ign rights, and without prejudice to these rights, as well as to all my subjects of the Evangelical Church of the State.

"Accordingly, this Bull is to be printed in the Collection of Laws, and the Ministry of Ecclesiastical Laws is to take care of its execution.

"(Signed) FREDERIC WILLIAM.

"To the State Chancellor, Prince von Hardenberg."

—Parl. Papers, 1851, p. 169.
ratified by a royal sanction of George IV., dated from Carlton House in England (h).

CCCXCV. According to the Law of Hanover (i), all Bulls and Briefs required the Royal placet, unless they related solely to spiritual matters, and if they did they were to be brought under the supervision of the King. The Roman Catholic Bishops of Hanover took a very stringent oath of fidelity to the Crown (k).

(h) Parl. Papers, 1851, pp. 90–102.
See Appendices to Eichhorn and Phillipps for the Bull.

(i) Parl. Papers, 1851, p. 89.

(k) "FORM OF OATH OF ALLEGIANCE TO BE TAKEN BY ROMAN CATHOLIC BISHOPS IN HANOVER.

"I, N.N., Bishop of Hildesheim and Administrator of Osnabruch, swear, &c., &c., on oath before the Almighty and All-knowing God, that, after having been promoted to the dignity of Bishop of Hildesheim and nominated Administrator of the Diocese of Osnabruch, I will be true, devoted, obedient, and subject to His Majesty Ernest Augustus King of Hanover, Royal Prince of Great Britain and Ireland, Duke of Cumberland, Duke of Brunswick and Luneburg, &c., my most gracious King and Ruler of the land, and to his illustrious legal successors in the Government. I will promote to the best of my power, in the practical circle allotted to me, what may advantage His Majesty and the common welfare (avoiding injury and disadvantage); and truly and conscientiously attend to my episcopal office, and my episcopal administration. I will take pains to lead a worthy and irreproachable life, and most zealously will, above all, be anxious that Christian knowledge and true piety, joined with reverence towards the head of the State and love to the fatherland, shall take deep root and blossom with vigour in the ecclesiastics and laymen entrusted to my direction, and especially also in the growing youth. I will therefore not suffer or allow that priests or other ecclesiastics under my control shall teach or act in a contrary sense or spirit, or otherwise, by word or deed, lead astray the fidelity of the subjects, and their loyalty to their King and fatherland; and should I get knowledge that anywhere, within or without my diocese, anything should be intended which could threaten with danger His Majesty the King, his dignity and rights, as well as the security, peace, and welfare of the State, I will make immediately a faithful report thereof. At the same time I declare hereby that I thoroughly understand, and will cause to be understood, the oath which I have to tender to His Holiness the Pope, as Head of the Catholic Church, before entering my office, and especially the clause
CCCXCVI. The relations of the Papal See with the Provinces of the Upper Rhine have been less easily arranged.

On the 24th March, 1818 (l), Wurtemburg, Baden, the two Hesses, Mecklenburg, Nassau, Oldenburg, the Grand-Ducal and Ducal Houses of Saxe, Lubeck, Bremen, Frankfort, and Hamburg, put forth a Latin declaration, which they subsequently denominated "Magna Charta Libertatis Ecclesiae Catholicae Romanae," founded upon the principles of the German Princes' Concordat of 1446, upon the resolutions of the Archbishops at Ems (die Emser Punktation) and the Austrian constitution of the Church under Joseph II.

This declaration was resisted and replied to by the Pope, who subsequently, in August 1821, promulgated a "Bulla circumscriptionis Dioecesium Provinciarum superiorum," in which he recited that the Sovereigns of the territories above mentioned had sent ambassadors to Rome to arrange matters respecting the foundation and dotation of certain bishoprics; "ast cum res omnes ecclesiasticae, de quibus actum fuit, concilari minime potuerint;" His Holiness was therefore compelled to make ecclesiastical arrangements for the faithful in these countries, in the hope that the rulers of them would be brought to a better mind. This Bull begins, "Provida soleresque."

The Sovereigns of the provinces replied by a "Kirchen-pragmatik," in which the former resolutions were embodied.

On the 11th April, 1827, the Pope promulgated a "Bulla

in this oath which purports, 'Hæc omnia et singula et inviolabilius observabo, quo certior sum, nihil in illis contineri, quod juramento fidelitatis meæ erga Regem Hannoveræ ejusque ad thronum successores debite adversari possit;' that I do not consider myself in any other sense, by this said oath of consecration, bound to an act or omission of any kind which would be against my duty as a subject, and the oath of allegiance, devotion, and subjection which I have tendered to His Majesty my most gracious King and Ruler of the land. All this I swear, vow, and declare, so help me God, and His holy Word."—Pari. Papers, 1851, p. 103.

(l) Phillipps, iii. 529.
erectionis Diœcesium Provinciae Ecclesiasticae Superioris Rheni," beginning "Ad dominici gregis custodiam" (m).

In this instrument the Sovereigns of the respective territories were allowed the power of objecting to any one of the candidates for the episcopal and archiepiscopal sees; and a hope was expressed that they would be benevolent towards their Catholic subjects, who would be most loyal to them.

CCCXCVII. These Bulls were finally admitted by the respective Governments, it being declared "that nothing therein contained shall be construed or considered as interfering with the rights of the Sovereign, opposed to the laws and ordinances of the land, the archiepiscopal and episcopal privileges, or the rights of the Evangelical Confession and Church" (n).

Moreover, on the 30th January, 1830, the Governments of the States to which these Bulls were applicable, promulgated "an ordinance relative to the exercise of the sovereign right of protection and superintendence over the Catholic Church." It recited the Bulls, and proceeded: "Now that, in consequence of the agreement made (getroffenen Abrede) with the Roman Court, the episcopal sees and cathedral chapters of this Church province are entirely filled, and they have entered upon the exercise of the authorities connected therewith, we are induced, in consequence with the other Governments in the Upper Rhine Province, to publish and make known the following ordinances for the maintenance of our right of protection and superintendence over the Catholic Church in our dominions."

Then follow thirty-nine Articles, in none of which the

(m) See Phillipps, Band iii. and Eichhorn, ii. App. for these Bulls; and Parl. Papers, 1851. "Further Correspondence," &c., p. 2. Hesse-Cassel, Nassau, &c.

(n) Phillipps, iii. 532.
Parl. Papers, 1851. "Further Correspondence," &c., p. 3.
Roman See is mentioned, except in the fifth, which declares that all Roman Bulls and Briefs must receive the sanction of the Sovereign, and that Bulls which have received it are only binding so long as nothing contrary to them shall have been enacted by the State; that the sanction of the State is necessary not only for present but for former Papal ordinances, if it be intended to use them. Otherwise all reference to "foreign" authority is forbidden, and the "Metropolitan" is spoken of throughout as the ecclesiastical superior.

By Article 3—"Every State exercises its inalienable "sovereign right of protection and superintendence (Majestätsrechte des Schutzes und der Oberaufsicht) over the "Church to its full extent."

By Article 8—"The Metropolitan constitution is re-esta- "blished according to its original intention, and the exercise "of the Metropolitan rights belonging to the Archbishop "are under the united protection of the collective States."

By Article 10—"The Church disputes (kirchliche Streit- "sachen) of Catholics may in no case be carried out of the "province, or before foreign judges; and therefore, in their "respect, the necessary regulations will be made."

By Article 15—"No ecclesiastic can be elected Bishop "who is not a German by birth and a citizen of the State in "which the vacant episcopal see is situated, or of one of the "States which have united to form such diocese."

By Article 16—"The Bishop-elect is to apply to the "Superior of the Church for information immediately after "the election. Prior to consecration he is to take the oaths "of fidelity and obedience, in his quality of Bishop, to the "Sovereign of the country."

By Article 17—"After having received consecration, "the Bishop enters into full exercise of the rights and duties "connected with the episcopacy, and the Governments will "not suffer him to be impeded; on the contrary, they will "effectually protect him."

By Article 22—"Taxes or rates, of whatever kind they "may be, or by whatever names they may be called, shall
"not be raised either by our own or by foreign ecclesiastical
"authorities."

By Article 33—"No ecclesiastic can accept any digni-
"ties, pensions, decorations, or titles from foreigners without
"the consent of his Sovereign."

By Article 34—"Every ecclesiastic, before he receives
"the Church ordination, shall take the oath of fidelity to the
"Head of the State, and swear canonical obedience to the
"Bishop."

By Article 36—"The ecclesiastics as well as the laity
"have the right of appeal to the State authorities, whenever
"an abuse of the ecclesiastical authorities takes place against
"them."

CCCXCVIII. The object of these regulations is mani-
festly to form a national Catholic Church.

The Pope remonstrated in a letter directed to the Arch-
bishops of the provinces, beginning "Pervenerat non ita,"
complaining of ecclesiastical assent having been given to
many of the provisions, and of a breach of the alleged con-
vention between the Princes and the Roman See. The Bishops
of the Upper Rhine more lately demanded a repeal of many
secular provisions concerning the Church, and claimed a
right of free communication with Rome (o).

In Baden laborious negotiations for three or four years
preceded the Concordat of 1858, which when at last com-
pleted excited much discontent in the country (p).

CCCXCIX. Saxony presents the solitary instance of a
Roman Catholic Sovereign over a Lutheran people—a state
of things exactly reversed in Belgium.

CCC. In the fifteenth century, the Prince and the people
of Saxony embraced the Evangelical Protestant Religion (q).

(o) Phillipps, Band iii. App.
Parl. Papers, 1851. "Further Correspondence."
Gazette de Hanau, 1851 (before June).
(q) Parl. Papers, 1851, p. 223.
The provisions of the Treaty of Passau (1552), of the Peace of Augsburg (1555), and of the additional articles to the Treaty of Westphalia, were strictly applied to Saxony.

During the existence of the Imperial Diet, Saxony was President of the "Corpus Evangelicorum," the politically-recognised part of the Imperial Representation.

Upper Lusatia was acquired by the Electoral House of Saxony in 1635, at the Peace of Prague. In this province the Roman Catholic Religion prevailed, and the preservation of its rights was confirmed by the Elector.

Augustus the Strong acquired the Crown of Poland, and embraced the Roman Catholic Faith; but he secured to his country, by what is called 'the Reservation' (Reservalien), all its religious rights. Till 1697 the Roman Catholic Faith was only tolerated in Saxony.

By Article V. of the Treaty of Posen, and by mandate of the 16th of February, 1807, Roman Catholics and Evangelists were placed on an equality as to their religious worship, and as to their civil and political rights. But the relation of the Roman Catholic Church to the State, and its fixed government, were established by a law promulgated on the 19th of February, 1829.

This law gave an organic construction to the Roman Catholic Church without any Concordat from the See of Rome.

In the old hereditary dominions there is an Apostolic Vicariate, to which office the Pope appoints one of the native clergy proposed to him by the King. The Apostolic Vicar takes an oath of allegiance to the King.

In Upper Lusatia the episcopal duties are performed by the Dean at Bredissin or Bautzen; the Dean is chosen by the Chapter and confirmed by the King (r).

There are no bishoprics in Saxony. When the Pope

(r) The Apostolic Vicar and the Dean are generally united in the same person, who is made a Bishop in partibus. He must take the oath of obedience to the Constitution of 1631.
makes the Apostolic Vicar or the Dean a Bishop, it is in partibus infidelium.

The Placet (s) is required for every notification of the Pope or the Apostolic Vicar. The right of the Placet is incident to the sovereignty of the State, whether the King be Roman Catholic or not.

All ecclesiastical authorities are subject to the Department of Public Instruction (das Ministerium der Cultur). Complaints of the abuse of the ecclesiastical power are brought before this department and before the Cabinet.

The arrangements entered into between Wurtemburg and the Papal See were the Bulls already mentioned ofProvida solersque (August 16, 1821), Ad dominici gregis custodiam (April 11, 1827).

By a Royal Ordinance of 30th January, 1830, all Papal Bulls and Briefs must obtain the royal sanction, and no former Bulls can be put in force without it.

A Concordat was concluded with Wurtemburg in June 1857, which gave great privileges to the Wurtemburg Church. But the ecclesiastics of Wurtemburg remained subject to the common law, and the attempt to procure for them an exceptional tribunal failed. The Pope submitted on account of the present condition of things (t).

CCCXI. In Denmark (u) no communication since the Reformation has taken place with Rome. At Copenhagen there is a Roman Catholic chapel, under the protection of the Austrian Government, who are bound by treaty to tolerate a Protestant chapel at Vienna.

In Sweden and Norway (x) there is no arrangement of the nature of a Concordat subsisting between the Crown and Rome. From the time of Charles IX. to 1780, no Roman Catholic priest could legally officiate in the kingdom. The

(s) The exercise of the royal supremacy (jus circa sacra) over the Church is settled by the Regulations of 1837 and 1845.
(u) Parl. Papers, 1851, p. 81.
(x) Ibid. p. 307.
Pope obtained toleration for the Roman Catholics when Gustavus III. visited Rome in 1780.

No Papal Bull has ever been published in these dominions.

CCCCII. There is no Concordat existing between the Swiss Confederation, as such, and the Roman See (y). The Federal Government does not interfere in any way respecting the appointment of Bishops, or the promulgation of Bulls or other instruments from Rome. These matters are regulated by the authorities of the respective Cantons, and the arrangements relating to them are of various kinds. But although no uniform rule upon these matters prevails throughout Switzerland, the principle of requiring the sanction of the domestic authority in all cases where the See of Rome directly addresses itself to the subject of that authority, appears to be steadily adhered to.

CCCCIII. The Bishops in the Roman Catholic Cantons are appointed either directly by the Cantonal authorities, or subject to their approbation, and the publication of Papal Bulls and instruments is not permitted without the previous placet of the Government. (z)

CCCCIV. There was a formal Convention (a) entered into between the Pope and the Canton of St. Gall, relative to the re-organisation of the Bishopric of St. Gall, in 1845 (b). This appears to be the only instance of any kind of Concordat between the Roman See and any of the Swiss Cantons. After this Convention a Bull was issued in 1847 (c), and was sanctioned by the placet of the Landammann and Executive Council of the Canton of St. Gall in an act

(z) The Valais appear to be the only exception; in it Bulls, &c., are published without the placet of the Government.
(a) Parl. Papers, "Further Correspondence," p. 51.
(b) See p. 61. ibid. for the Bull relative to this bishopric, beginning "Instablis rerum humanarum memoria."
(c) Ibid. pp. 72, 73. The Act of the State of St. Gall. "Der Eingangs erwähnten Bulle, welche anfängt 'Instabilis' u. s. w., wird an mit das ob-rigkeitliche Plazet ertheilt," &c.
which carefully guarded "the sovereign right which belongs " to the State in reference to the Catholic body."

In 1824 (d), on the occasion of the establishment of the Double Episcopal See of Coire and Gall, without notice given to the State, or its consent being obtained, the Great Council passed a resolution refusing to recognise the negotiation sequestrating the temporalities of the Bishopric of Coire, and declaring to the Prince Bishop of Coire that the State considered "every Bishop of Coire, both according to " legal principles and special agreements with the Episcopal " See, and the existing laws, to be, in every temporal " respect, as much dependent upon the same as other Chris- " tian Sovereigns considered their Bishops to be."

In 1834 (e) the President and Great Council of the Canton of Lucerne put forth a law subjecting to the placet of the State "Roman Bulls, Briefs, and other en- " actments."

In 1850, the Great Council of the Canton of the Grisons promulgated an Ordinance declaring, among other things, " That all regulations and enactments of ecclesiastical " authorities of both religions, intended to reach the people, " directly or indirectly, shall be submitted to the inspection " of the Executive, prior to their being promulgated, com- " municated, executed, or applied " (f). This law is enforced by the penalties of fine and imprisonment.

CCCCCV. The reorganisation of the Bishopric of Basle (g) 1828–1830, was effected upon the principle of "Episcopal " Concordats" and "Papal Demarcation Bulls," recognised by special "State sanctions" of the respective Governments

"Genannte Bulle soll, sowohl in ihrem Urtexte als in der von uns anerkannten deutschen Übersetzung, in die Sammlung der Gesetze und Beschlüsse aufgenommen werden."

(d) Parl. Papers, 1851, "Further Correspondence," p. 74.
(e) Ibid. p. 75.
(f) Ibid. p. 77.
(g) Ibid. pp. 78, 153.

See especially the Historical Memoir (Torrade), p. 78; translated, p. 153.
of the Cantons. One of the most curious instances of the jealousy with which the Swiss have regarded whatever was supposed to be an ecclesiastical encroachment upon the civil power, is to be found in the address of the old Patrician Government of Fribourg to the Bishop of Fribourg, complaining of the publication by him of directions concerning the observance of Lent, without the knowledge or consent of the Government (h). The language in which the Fribourg Government enunciates the principle on which it relies is remarkable: "Il est dans la nature des choses, il est de l'essence de la souveraineté, et l'ordre public réclame impérieusement que tout acte, quelle qu'en soit la source ou le but, ne puisse être publié dans un État sans l'agrément de l'autorité souveraine. Cette règle, si intimement liée au bien de la société, a été observée, votre Grandeur ne saurait l'ignorer, dans les États les plus attachés à la religion catholique, et qui par conséquent respectaient le plus les droits de l'Eglise."

(h) Ibid. p. 228.
CHAPTER IX.

THE INTERNATIONAL RELATIONS OF THE PAPACY WITH STATES IN WHICH A BRANCH OF THE CATHOLIC CHURCH, NOT IN COMMUNICATION WITH ROME, IS ESTABLISHED.

CCCCVI. We have now to consider the relations of the Papacy with those States in which a branch of the Catholic Church is established (a). These Catholic Churches are distinguished from Roman Catholic Churches by not acknowledging the Pope as their spiritual chief, and from merely Protestant Churches by their Episcopate; or, as it is clearly said by Portalis, "Toutes les communions protestantes s'accordent sur certains principes. Elles "n'admettent aucune hiérarchie entre les pasteurs" (b). The established Catholic Churches not in communion with Rome are two:

1. The Greek Church.
2. The English Church, and, as connected with it,

The English Church in the Colonies, the Episcopalian Church of Scotland and of Ireland, and the North American Church. These are not established, in the sense of being endowed by the State.

CCCCVII. It does not lie within the province of this work to dwell upon the history of that great schism between the Greek and Latin Churches which made the first external rent in the seamless robe of the Church.

(b) Rapport du Vicomte Portalis sur les Articles organiques des Cultes protestants.
The Greek branch of the Catholic Church is said to number eighty millions of worshippers. It is established in the countries subject to the Porte, Russia, and Greece. In all these countries the Roman See fosters a separate communion.

CCCCVIII. Russia has no Concordat with the Pope, but certain articles were agreed upon in 1847, between them, which regulate the appointment of Roman Catholic prelates. They are nominated by the Emperor, who communicates his choice confidentially to the Pope, who, if he entertain no objection to it, canonically institutes the imperial nominee. But all direct communication between the Pope and the Roman clergy in Russia is interdicted; the only channels through which it is allowed to be carried on being the Russian mission at Rome and the Department of Foreign Affairs at St. Petersburg. This department and that of Foreign Worship (which is under the jurisdiction of the Minister of the Interior), examine every instrument emanating from Rome before it can be delivered to the clergy of that see.

The present practice of the Russian Government is to decline the reception of any Nuncios or Papal Legates at St. Petersburg, except such as are sent on special missions.

In Poland the Pope, in 1858, vainly endeavoured to negotiate a Concordat for the Roman Church in Poland with the Emperor of Russia.

In the Diocese of Chelin and other dioceses the Clergy of the United Greek Church became merged in the Orthodox Greek Church (c).

CCCCIX. No Concordat, or arrangement in any way equivalent or analogous to it, subsists between the Sublime Porte and Rome. The Roman Vicar Apostolic resident at Constantinople is not recognised by the Turkish Government.

The Roman Bishops are either appointed or confirmed

by the Pope, and Papal instruments are transmitted to them from Rome, either directly or through the unrecognised Vicar Apostolic; but no Papal Brief can be legally enforced, and the Pope appears to connive at the exercise of spiritual authority by the Roman communities in Turkey, but to reserve to himself the right of interference (d).

CCCCX. The relations of the National Church of Greece with the Patriarchate of Constantinople will be mentioned in the next chapter.

Between the Kingdom of Greece and the See of Rome there exists no Concordat, or equivalent arrangement.

The Latin population appears to be diminishing, though in some of the islands, inhabited by the descendants of the old Venetian and French settlers, the Latin Bishops exist in a number at present disproportioned to their congregations.

The Pope directly appoints Bishops of the Latin Church, who apply to the Minister of State for their exequatur, which, it appears, has never been refused.

The Pope does not appear to be compelled to nominate natives to the Latin sees, though the existing Latin Bishops are natives.

The reception and publication of Papal instruments is not forbidden by any law, but, as a matter of fact, communications from Rome are carried on through the medium of a private correspondence.

The Latin Church founds its rights on long custom and enjoyment guaranteed at the Revolution, which guarantee was recognised by the National Assembly in 1843, at the period of the formation of the Constitution.

The Bishops are required to take the oath of allegiance to the King, and of fidelity to the Constitution.

(d) "The appointment of Bishops," writes Sir Stratford Canning, "is at once a matter of conflicting pretensions, and of mutual though tacit compromise between the Court of Rome and the several Roman Catholic communities."—Parl. Papers, 1851, p. 323.
CCCCXI. The history of the relations of the Roman See with England, since the Reformation, is without parallel in the annals of the world.

Before the Reformation, these relations of England with Rome were not unlike those which subsisted between the Papacy and other considerable independent kingdoms.

In the history of no kingdom is the independence of the national Church written with a firmer character than in that of England, in the statutes of the realm, the decisions of judicial tribunals, and the debates of Parliament.

The Constitutions of Clarendon, in Henry II.'s reign (A.D. 1164), though directly aimed at the repression of the inordinate claims and privileges of the national Church, were, no doubt, indirectly "calculated," as Hume observes, "to establish the independency of England on the Papacy;" and therefore, when the King sought Pope Alexander's ratification of them, that Pontiff annulled and rejected all but six out of the sixteen memorable articles. The resistance of Becket, and, still more the general feeling excited by the wicked and impolitic murder of that prelate, procured the practical abrogation of the articles objected to, by the enactments of Edward I. (e) and III., of Richard II., of Henry IV. and V., and of Edward IV.

CCCCXII. In the severe penalties attached to the statutes of Provisors and Praemunire may be read the steady determination of the English people to maintain an independent national Church, and to resist the ultramontane doctrines which had taken root in other countries.

The Statute of Provisors (25 Ed. III. st. 4, A.D. 1350) recites that "the Holy Church of England was founded in the "estate of prelacy within the realm of England" by the King and nobles of England, and forbids the prevalent abuses of the Pope's bestowing benefices upon aliens, "benefices of England which be of the advowry of the people of Holy Church," the reservation of first-fruits

(e) See the provisions of the Parliament at Carlisle, A.D. 1307.
to the Pope, and the provision or reservation of benefices to Rome. By 38 Ed. III. st. 2. (A.D. 1363), persons receiving citations from Rome in Courts pertaining to the King, &c., are liable to the penalty of 25 Ed. III. st. 5. c. 22. (f)

The Statute (A.D. 1392) 16 Richard II. c. 5, renders

(f) 38 Ed. III. st. 2, A.D. 1363.

"Præmunire for suing in a foreign realm, or impeaching of judgment given."

Præmunire, so called from the words of the writ:—"Rex vice comiti," &c., "præmunire facias praefectum A.B. quod tunc sit coram nobis."

25 Ed. III. st. 5. c. 22. A.D. 1351. Against Provisors. Now repealed. There are various statutes of Richard II. against giving benefices to aliens, or allowing aliens to purchase or convey benefices, viz.:

13 Rich. II. st. 2, c. 2, is a confirmation of the statute of 25 Ed. III. st. 4. See too c. 3.

16 Rich. II. c. 5, A.D. 1392, made it Præmunire to purchase Bulls or other instruments from Rome. This statute was called by the Pope execrable statutum, and the passing of it fœdum et turpe facinus.—Burn's Ecclesiastical Law, II, 36 (ed. Phillimore). See also, generally, as to Papal authority—

2 Hen. IV. c. 3, A.D. 1400.

3 Hen. V. st. 2, c. 4, A.D. 1415.

32 Hen. VI. c. 1 (Ireland), A.D. 1454. All statutes against Provisors in England and Ireland to be kept in force.

7 Ed. IV. c. 2 (Ireland), A.D. 1467. Against Bulls from Rome.

2 Ed. IV. c. 3.

10 Hen. VIII. c. 5. An Act against Provisors to Rome.


24 Hen. VIII. c. 12, A.D. 1532. The great Statute forbidding Appeals to Rome, under pain of Præmunire.


— c. 20. Act for Non-payment of First-fruits to the Bishop of Rome.

— c. 21. Concerning Peter-pence and Dispensations.


— c. 16, A.D. 1536. As to Dispensations and Licences heretofore obtained from the See of Rome.


5 Eliz. c. 1 and 13 Eliz. c. 2 brought the maintaining the pre-eminence of the See of Rome under the penalties of the Statutes of Provisors and Præmunire.
the procuring of Bulls from Rome liable to *Pramunire*, and it recites a variety of Papal aggressions upon the privileges of the Crown: among other matters, as to the translation of Bishops out of the realm, or from one bishopric to another within the realm, and the carrying of treasure out of the realm, "and so the realm, destitute as well of counsel as of substance, to the final destruction of the said realm, and so the Crown of England, which hath been so free at all times that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality (la regalie) of the same Crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the kingdom of the King and Lord, his crown, his royalty, and of all his realm, which God defend."

This statute before the Reformation, and the subsequent enactment of 24 Henry VIII. c. 12, and the famous case of Cawdry (*g*), may be said to contain the whole Constitutional Law of England upon the subject of the usurpation of the Papal See, upon the liberties of the national Church, and in regard to the authority and privilege of the English Crown.

CCCCXIII. It would be difficult to conceive a clearer or more dignified exposition of the law upon this subject than is contained in the prefatory part of the statute of Henry VIII.

"Where by divers sundry old authentick histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and King, having the dignity and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spiritualty and temporalty, been bounden and

*(g) 5 Coke, 8.*
"Owen to bear next to God a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contents, happening to occur, insurge, or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shewed by that part of the said body politic called the spirituality, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number it hath been always thought, and is also at this hour sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister affection, the King's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church, both with honour and possessions; and the laws temporal for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

CCCCXIV. At the period of the Reformation, the national Church introduced an express denial of the authority of the Pope, henceforth called in all public acts and docu-
ments the Bishop of Rome, into her articles and canons, and an acknowledgement of the temporal supremacy of the Crown over the Ecclesiastical as well as the Civil State.

Henry VIII. (h), was excommunicated, and in the Bull his subjects were commanded to renounce their allegiance, and the nobles were ordered "sub ejusdem excommunicationis ac perditionis bonorum suorum paenit." to unite with all Christian Princes in expelling Henry from England. Elizabeth (i) was excommunicated in pretty similar terms, but not until twelve years after her accession. In answer to a request from the Emperor and other Roman Catholic Princes that she would allow the Roman Catholics places of worship, she replied that she would not allow them to keep up a distinct communion, alleging her reasons in these remarkable words, "for there was no new faith propagated in "England: no religion set up but that which was com-
"manded by our Saviour, practised by the primitive "Church (k), and unanimously approved by the fathers of "the best antiquity" (l). The Roman Catholics, both in England and Ireland, outwardly conformed to the services of the Church for about ten years (m).

Both this fact and the ground of Queen Elizabeth's refusal are remarkable, and not without their bearing, as considerations of International Law, upon the question of the Papal aggression in England, in 1851.

CCCCXV. As the Jesuits pursued their machinations

(h) Damnatio et Excommunicatio Henrici VIII. Regis Anglie, ejusque fautorum, &c. (edita A.D. 1535 et 1538). This is printed at length in the Appendix to the Brutum Fulmen, or the Bull of Pope Pius V. concerning the Damnation, Excommunication, and Deposition of Queen Elizabeth; and the Bull of Pope Paul III. against Henry VIII., by Thomas [Barlow], Lord Bishop of Lincoln. (London: 1681.)

(i) Accession, A.D. 1558; excommunication, A.D. 1570.

(k) The English Church has always held the doctrine of St. Cyprian, "Episcopatus unus est, cujus a singula in solidum pars tenetur."—De Unitate Eccles. (London), 641.


against Elizabeth, she had recourse, by way of defence, to the severest statutes against the Papal power, enacting that the attributing by act or speech any such authority or jurisdiction to the Bishop of Rome as he had heretofore claimed should be punishable with Praemunire.

CCCCXVI. In the year 1827, long after the Pope had been restored to the Vatican, in great measure through British money and British arms, this statute of Elizabeth was held by the law officers of the Crown to be still in force, and actually to prevent Mr. Canning (then Secretary for Foreign Affairs) from replying to a letter sent to him by the Pope announcing his succession to the Pontificate (n). From the reign of Elizabeth till the recent Act of Victoria, all legal channels of communication—we pass by the illegal exception of James II.'s reign—between Great Britain and the See of Rome were closed,—a fact in history almost incredible when it is remembered that in Ireland alone there were many Roman Catholics.

CCCCXVII. (o) William III. introduced that barbarous code of persecuting laws against the Roman Catholics which disgraced the statute-book of this country until the reign of George III.; which made Ireland, according to Mr. Burke's expression, "full of penalties and full of Papists" (p); and which as entirely failed in its object of eradicating Papacy as the Inquisition had failed in destroying Protestantism.

Since the alterations which the law has undergone during the reign of the present Sovereign, it is questionable whether any civil penalty attaches to the acknowledgement of the Pope.

CCCCXVIII. The national intercourse with the See of

(n) Mr. Canning's speech on the Roman Catholic question, March 6, 1827.

(o) In Collier's Eccles. History, vol. ix. p. 365, will be found Paul V.'s Brief to the Roman Catholics forbidding their going to the English service, or taking the oath of allegiance, A.D. 1606; and Cardinal Bellarmine's letter to the Archpriest.


George Blackwell, against the Oath of Allegiance, A.D. 1607, p. 365.
Rome became lawful in 1848 by the statute of Victoria which enacts:—

"1. That, notwithstanding anything contained in any Act or Acts now in force, it shall be lawful for Her Majesty, her heirs and successors, to establish and maintain diplomatic relations, and to hold diplomatic intercourse, with the Sovereign of the Roman States.

"2. Provided always, and be it enacted, that it shall not be lawful for Her Majesty, her heirs or successors, to receive at the Court of London, as ambassador, envoy extraordinary, minister plenipotentiary, or other diplomatic agent, accredited by the Sovereign of the Roman States, any person who shall be in Holy Orders in the Church of Rome, or a Jesuit or member of any other Religious Order, Community, or Society of the Church of Rome, bound by monastic or religious vows.

"3. Provided always, and be it enacted, that nothing herein contained shall repeal, weaken, or affect, or be construed to repeal, weaken, or affect, any laws or statutes, or any part of any laws or statutes, now in force for preserving and upholding the supremacy of our Lady the Queen, her heirs and successors, in all matters civil and ecclesiastical within this realm, and other Her Majesty's dominions, nor those laws, or parts of laws, now in force which have for their object to control, regulate, and restrain the acts and conduct of Her Majesty's subjects and to prohibit their communications with the Sovereigns of foreign States on the said matters, all which laws and statutes ought for ever to be maintained for the dignity of the Crown and the good of the subject" (q).

This statute has not as yet been acted upon. It is said to have given offence to Rome by not speaking of the Pope in his spiritual character, and by the prohibition it contained with respect to the reception of any ecclesiastical ambassador from the Holy See.

(q) 11 & 12 Victoria, c. 108.
The Pope, however, was at that time unquestionably a temporal Sovereign, and in that capacity subject to temporal International Law. The Pope had temporal as well as ecclesiastical subjects of high rank, and the former might well have discharged the duties of ambassador at a foreign Court, not in spiritual communion with Rome. If that foreign Court had reason to apprehend that the presence of an ecclesiastical ambassador would be likely, on whatever account, to disturb the peace of the country, it was surely justified, both by the practice of *comity* as well as by *strict law*, in refusing to receive an accredited minister of that character.

CCCCXIX. It is necessary to preface our observations on the promulgation in England of the Papal instrument in 1850, by some notice of the relations which have previously subsisted between the Roman Catholics in these realms and the See of Rome, since the epoch of the Reformation.

Dr. Watson (r), Bishop of Lincoln, in Queen Mary's time, the last survivor of the prelates expelled by Queen Elizabeth, died in 1584. The Pope did not then attempt—though urged to do so at Rome—the establishment of a Roman Catholic Episcopacy in England. In 1589 an Archipresbyter was sent here, under the authority of a Brief from Gregory XIII.; a Mr. Blackwell was instituted to the office, in which he was confirmed by a Brief of Clement VIII. in 1599. Rome governed the Roman Catholics through these Archipresbyters till about 1623; then the visit of Prince Charles (afterwards Charles I.) to Spain, his subsequent marriage with the French Princess Henrietta Maria, and the consequent necessity of a Papal dispensation, produced a relaxation, if not of the law itself:

(r) The *Letters Apostolic*, by Dr. Twiss, contain a great amount of information on this subject. See c. v. p. 114. In the *Appendix* will be found the Bull of Pius IX., and various instruments of his predecessors affecting the Roman Catholics in England.

See, too, *Butler's Historical Memoirs of the Roman Catholics*, and Dodd's (Roman Catholic) *History*. 
in England, of the severity of its administration against Rome.

In 1622, a Roman Catholic Bishop of Chalcedon, that is in partibus, appears for the first time to have been sent to England by virtue of a Papal Bull. Two things are remarkable in this instrument: —

1. That it is expressly provided that no prejudice should arise from it to the Patriarch of Constantinople, to whom the Church of Chalcedon was subject.

2. That no allusion to England is to be found in it.

So carefully was both the public law of the Church, which is itself of an international character, and the law which regulates the intercourse of independent nations, observed in this instance.

Subsequently, a Vicar Apostolic was sent from Rome to England (s). This Vicar, though also a Bishop, was not, in the Canonical sense, Ordinary in the place over which he presided; therefore the Roman Catholics remained under the immediate authority of the See of Rome. In James II.'s time, the number of Vicars Apostolic was increased to four, and so it remained till the year 1840. There were afterwards eight Vicars, with Bishops in partibus as coadjutors.

Under this system a regular Roman Catholic Hierarchy was not established, and it would seem that the Canon Law was imperfectly, if at all, applicable to that status of the Roman Catholics.

In Ireland the Roman Catholic Church has for many years been on a different footing, namely, it has been governed byOrdinaries and not by Vicars Apostolic.

In the British Colonies (t) the Roman Catholic Church is partly endowed and established, as in Canada, and everywhere tolerated, in whatever form it may chance to assume.


(t) I have not entered into a discussion of the controversy about precedence between the Anglican and the Roman Hierarchy.
It will be obvious from this necessarily brief sketch of the status of the Roman Catholics in England since the Reformation, that the ill-advised instrument which Pius IX. sent to these shores in 1851 was well calculated to excite the national feeling to the utmost verge of hostility against the Roman Catholics, and to resuscitate the expiring embers of religious animosity.

Not only was the customary law, as acknowledged and expounded by the greatest jurists and canonists of Rome, in the promulgation of decrees without the Placet or Exequatur of the State, violated, but the additional injury was done of proclaiming to the subjects of that State that the Church established in it was deficient in that indispensable and distinguishing mark of Catholicity which the Constitution had declared it to possess.

Upon this principle the infraction of the law by the late Papal Bull would have been, so far as the State alone is concerned, less, if it had been confined to Scotland, where there is no established Episcopacy, and still less in the United States of North America, where there is no established Church at all; though in both it would have been a clear offence against International Ecclesiastical Law, as not having the Exequatur or Placet of the Sovereign.


A country which has retained as a cardinal point of its constitution the primitive episcopal government of the Catholic Church has a right to treat the Papal appointment of a foreign Episcopate, unauthorised by the State, as a grave infraction of International Law—far graver than it would have been if no such national branch of the Catholic Church had been established in the State. Thus the manifesto in March 29, 1851, of the two Archbishops and twenty Bishops of the English Church set forth "the undoubted identity of "the Church before and after the Reformation," and that
at the Reformation the English Church rejected certain corruptions and established "one uniform ritual," but "without any degree severing her connexion with the ancient Catholic Church" (u). In Pius IX.'s Apostolic Letters not only were Bishops created by titles derived from places in the Queen's dominions, thereby forestalling the prerogative of the Crown as to the future creation of Anglican Bishops, but, in one instance, that of St. David's, the title of an existing Anglican See was conferred by the Pope upon one of the Roman Bishops.

2. The language of the instrument (x), treating England as if it had been a territory of the Sovereign of the Roman States, parcelling out the kingdom into districts, "motu propio," "plenitudine Apostolicae nostrae potestatis," without the faintest allusion to any other authority, was another aggravation of the offence, as were also—

3. The undeniable fact that the act being done "Rege inconsulto," was done contrary to Canon no less than to International Law.

4. The proclamation of the Bull in the metropolis of the kingdom, without any Placet or Exequatur from the Sovereign.

Lastly, the Pope could not allege, by way of defence or palliation, the impossibility of conferring with the Sovereign of Great Britain, before he did an act without precedent in Ecclesiastical or International Law, because the recent statute above mentioned afforded means of international communication between the two Courts.

CCCCXXI. It is not within the scope of this work to travel into any political or ecclesiastical questions growing

(u) The Guardian, April 2, 1851.
(x) "Itaque post rem universam a nobis etiam accurata consideratione perpensam, motu proprio, certa scientia, ac de plenitudine Apostolicae nostrae potestatis constituitus, atque decernimus in regno Angliae re florat juxta communem Ecclesie Regulas Hierarchia ordinariorum Episcoporum qui a sedibus nuncupantur quas hic hise ipsis nostris Literis in singulis Apostolico rum Vicariatu m Districtibus constituitus."
out of this wrongful and illegal act; but no impartial writer upon International Law could pass it by without adverting to the censure which that law inflicts upon it.

It is true that the publication of these Letters Apostolick raised a ferment in the minds of the English people, greatly resembling that which disgraced this country in the reign of Charles II., under the auspices of Titus Oates.

The result of many stormy debates in Parliament was the following statute, passed in the fourteenth year of the reign of Queen Victoria (y):—

"Whereas divers of Her Majesty’s Roman Catholic subjects have assumed to themselves the titles of Archbishops and Bishops of a pretended province, and of pretended sees or dioceses, within the United Kingdom, under colour of an alleged authority given to them for that purpose by certain Briefs, Rescripts, or Letters Apostolical from the See of Rome, and particularly by a certain Brief, Rescript, or Letter Apostolical purporting to have been given at Rome on the twenty-ninth of September One thousand eight hundred and fifty: and whereas by the Act of the tenth year of King George the Fourth, chapter seven, after reciting that the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, were by the respective acts of union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably, and that the right and title of Archbishops to their respective provinces, of Bishops to their sees, and of Deans to their deaneries, as well in England as in Ireland, had been settled and established by law, it was enacted, that if any person after the commencement of that Act, other than

(y) 14 & 15 Vict. cap. 60, An Act to prevent the Assumption of certain Ecclesiastical Titles in respect of Places in the United Kingdom (1st August, 1851).
the person thereunto authorised by law, should assume or use the name, style, or title of Archbishop of any province, Bishop of any bishopric, or Dean of any deanery, in England or Ireland, he should for every such offence forfeit and pay the sum of one hundred pounds: And whereas it may be doubted whether the recited enactment extends to the assumption of the title of Archbishop or Bishop of a pretended province or diocese, or Archbishop or Bishop of a city, place, or territory, or Dean of any pretended deanery in England or Ireland, not being the see, province, or diocese of any Archbishop or Bishop or deanery of any Dean recognised by law: but the attempt to establish, under colour of authority from the See of Rome, or otherwise, such pretended sees, provinces, dioceses, or deaneries, is illegal and void: And whereas it is expedient to prohibit the assumption of such titles in respect of any places within the United Kingdom: be it therefore declared and enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that—

I. All such Briefs, Rescripts, or Letters Apostolical, and all and every the jurisdiction, authority, pre-eminence, or title conferred or pretended to be conferred thereby, are and shall be and be deemed unlawful and void.

II. And be it enacted, that if, after the passing of this Act, any person shall obtain or cause to be procured from the Bishop or See of Rome, or shall publish or put in use within any part of the United Kingdom, any such Bull, Brief, Rescript, or Letter Apostolical, or any other instrument or writing, for the purpose of constituting such Archbishops or Bishops of such pretended provinces, sees, or dioceses within the United Kingdom; or if any person, other than a person thereunto authorised by law in respect of an archbishopric, bishopric, or deanery of the United Church of England and Ireland, assume or use
"the name, style, or title of Archbishop, Bishop, or Dean of any city, town, or place, or of any territory or district, (under any designation or description whatsoever,) in the United Kingdom, whether such city, town, or place, or such territory or district, be or be not the see or the province, or co-extensive with the province, of any Archbishop, or the see or the diocese, or co-extensive with the diocese, of any Bishop, or the seat or place of the Church of any Dean, or co-extensive with any deanery, of the said United Church, the person so offending shall for every such offence forfeit and pay the sum of one hundred pounds, to be recovered as penalties imposed by the recited Act may be recovered under the provisions thereof, or by action of debt at the suit of any person in one of Her Majesty’s Superior Courts of Law, with the consent of Her Majesty’s Attorney-General in England and Ireland, or Her Majesty’s Advocate in Scotland, as the case may be."

The policy of Queen Elizabeth was certainly bolder and perhaps wiser: when in her time the Pope sent an uninvited Legate to England, she took good care that he should not set his foot upon the shore of her territory, and if he had done so, she would certainly have sent him back to Rome.

CCCCXXI (A). The Act, however, of the 14 and 15 Vic. c. 60 has been continually violated ever since its enactment, and the provisions of it have never been enforced; moreover the abolition of the Irish Church Establishment in 1869 gave an application to it which had never been intended. The disestablished Irish Bishops became liable to penalties which were directed against the Roman Bishops. In 1871 a repealing Act was passed, which, however, carefully asserted the principle that no pre-eminence or coercive power could be conferred otherwise than by the laws of the realm. It recites that, under 14 and 15 Vic. c. 60, "certain enactments were made, prohibiting under penalties the assumption of the title of archbishop or bishop of a pretended province
or diocese, or archbishop or bishop of a city, place, or
territory, or dean of any pretended deanery in England or
Ireland, not being the see, province, or diocese of an arch-
bishop or bishop or deanery of any dean recognised by law;" and proceeds to enact that, "whereas no ecclesiastical title
of honour or dignity derived from any see, province,
diocese, or deanery recognised by law, or from any city,
town, place, or territory within this realm can be validly
created, nor can any such see, province, diocese, or deanery
be validly created, nor can any pre-eminence or coercive
power be conferred otherwise than under the authority
and by the favour of Her Majesty, her heirs and succes-
sors, and according to the laws of this realm; but it is
not expedient to impose penalties upon those ministers of
religion who may, as among the members of the several
religious bodies to which they respectively belong, be
designated by distinctions regarded as titles of office,
although such designation may be connected with the
name of some town or place within the realm:
"Be it therefore declared and enacted by the Queen's
most Excellent Majesty, by and with the advice and
consent of the Lords Spiritual and Temporal, and Commons
in this present Parliament assembled, and by the authority
of the same, as follows:
"1. The said Act of the session of Parliament held in the
fourteenth and fifteenth years of the reign of Her Majesty
chapter sixty, shall be and the same is hereby repealed:
Provided, that such repeal shall not nor shall anything in
this Act contained be deemed in any way to authorise or
sanction the conferring or attempting to confer any rank,
title, or precedence, authority or jurisdiction on or over
any subject of this realm by any person or persons in
or out of this realm, other than the Sovereign thereof"(z)

(z) 34 Vict. An Act to repeal an Act for preventing the assumption of certain Ecclesiastical Titles in respect of places in the United King-
dom.
CCCXXII. The practice of Rome since the reign of Queen Elizabeth to appoint Roman Catholic Bishops in partibus, did not infringe directly the principle of territorial authority incident to Sovereigns or prelates of the country. The conduct of Great Britain with respect to the consecration of Bishops for the United States of North America was in harmony with this principle, and it must also be remembered that there was no established Church in that country, and that there is no trace in the English statute (a) of the assumption of authority over the subjects of the United States. The conduct of Great Britain with respect to the establishment of the Anglican Bishopric at Jerusalem can only be defended, as a question of International Law, upon the ground of the permission of the Sultan, and, as a question of Canonical Law, upon the permission of the Greek ecclesiastical authorities.

The statute founding that Bishopric was accompanied by a Letter Commendatory from the Archbishop of Canterbury "to the Right Reverend our Brothers in Christ, "the Prelates and Bishops of the Ancient and Apostolic "Churches in Syria and the countries adjacent;" and also by an explanatory statement, published by authority, in which it was declared that the new Bishop's "spiritual "authority will extend over the English clergy and con-"gregations, and over those who may join his Church, and "place themselves under his episcopal authority in Pales-"tine, and, for the present, in the rest of Syria, in Chaldea, "Egypt, and Abyssinia: such jurisdiction being exercised, "as nearly as may be, according to the laws, canons, and "customs of the Church of England; the Bishop having "power to frame, with the consent of the Metropolitan, par-"ticular rules and orders for the peculiar wants of his people. "His chief missionary care will be directed to the conversion "of the Jews, to their protection, and to their useful em-
"ployment."

(a) 26 George III., c. 84.
"He will establish and maintain, as far as in him lies, relations of Christian charity with other Churches represented at Jerusalem, and in particular with the Orthodox Greek Church; taking special care to convince them that the Church of England does not wish to disturb, or divide, or interfere with them; but that she is ready, in the spirit of Christian love, to render them such offices of friendship as they may be willing to receive."

Lord Aberdeen, who was consulted at the time of the institution of the bishopric, afterwards declared in a letter, which has been published, that no interference was intended with the authority of the Greek Church (b).

Considered apart from these limitations, the terms of the English statute (c) under which this Bishopric was founded are so extensive as to be, however unintentionally, indefensible, upon the strict principles of International Law, Ecclesiastical as well as Civil.

(b) Thomassinus has a chapter on the difficulties arising "circa ordinatiores Episcoporum, vel plurium in una urbe," &c.—Vetus et Nova Eccles. Discipl. pt. i. 1. 1. c. xxix. S. vii. refers to the case of Venice, in which there were Greek Bishops for the Greek people; so in Cyprus and Rhodes: "Duo quippe in uno populo erant populi duo urbe in una urbes quoties duos assignari Episcopos indultum est." The second Bishop should be confined to those of his own country and language, and act with the permission of the first.

(c) 5 Victoria, c. 6. s. 1.
CHAPTER X.

THE ELECTORS, MINISTERS, AND COURTS OF THE POPE, CONSIDERED IN THEIR RELATION TO FOREIGN STATES.

CCCCXXIII. The ambition of the Emperors of Germany, which at one period, as we have seen, claimed the absolute power of nominating the Pope, produced a reaction both in favour of a free election to the spiritual throne and in favour of the independence of the temporal principality; for it became evident to Catholic Sovereigns that the Sovereign who nominated the supreme Pontiff would indirectly govern the whole of Christendom (a).

At all times, indeed, the rule and manner of succession to that throne, which claims, without reference to territorial limits, a spiritual allegiance, theoretically from all Christians, practically from all co-religionists, of whatever country they may be subjects, must be a question of grave general international importance. But at no time, perhaps, can this be more truly predicated than at the present. It will be found on inquiry that most of the questions which in these days agitate nations have religion for their object or their pretext. The difficult problem which the union of a temporal sovereignty with an universal spiritual dominion so long presented to Europe has indeed been solved for the present certainly, perhaps for the future also, by the Parliament of the Italian Kingdom; nevertheless the peculiar condition of the Papacy still involves political and international considerations interesting to all States (b).

(a) Portolis, Introd. v. vi.

"Né ciò dipende tanto dalla natura dei Governi che prevalgono in
ELECTORS OF THE POPE.

CCCCXXIV. It is therefore expedient to inquire:—
1. What qualifications render a person eligible to be elected Pope?
2. Who are the electors and the ministers of the Pope?
3. What is the mode and law of such election?
4. May the Pope be deposed for any offence, and by whom?

CCCCXXV. (1.) According to rule and usage, no one is eligible, and no one is elected to be Pope, except a Cardinal (c); but according to the Canon Law, the election of another person (d), even, it is said, of a layman (e), would not be null. So that Maximillian's (f) expectations were not without the pale of possible gratification. But the throne of Rome may not be filled, as other thrones are, by a female. One must be a Protestant, says the French canonist who has been already cited, or be blinded by other fanatical prejudices, "pour croire à la fable de la Papesse Jeanne" (g).

As to the age of the Pope, it must not be less than that of the canonical age required for the Episcopate, namely, thirty years (h). In the year 1770, it was remarked that of the successors of St. Peter three only had reached that elevation under the age of forty.

CCCCXXVI. (i) The Electors of the Pope are the Cardinals.

Europa quanto dalla natura stessa del problema, il quale è implicato nelle più gravi ed universali questioni religiose, internazionali, e politiche."

Vide post, Lettera XVII.
(c) D. de Maillane, ii. 551. "Pape."
(d) Can. oportebat et seq. dist. 79.
(e) Glos. in cap. si quis pecunia cod verb. non Apostolicus.
(f) Vide ante, s. ccxxxix. note 7.
(g) D. de Maillane, ii. 551. "Pape."
(h) Ibid. ii. 552. "Pape."
Ibid. i. 113. "Age."
Ibid. ii. "Episcopat."
(i) Pachmann, Lehrbuck des Kirchenrechts, ss. 175–8.
Vide post, Lord Palmerston's observations.
Who are the persons eligible for an order possessing such an important suffrage?

How are the members of this order elected or appointed?

What is their history?—what are the functions of this order?—are questions which immediately present themselves for solution.

CCCCXXVII. Originally every Church was governed by a Bishop, who was assisted by a synod or senate of the clergy, that is, of the priests and deacons in his diocese. Those of the clergy who were attached by institution to *certain cures of souls*, to certain Churches, were at first designated *Incardinati*, as a name of distinction from the temporary and auxiliary clergy not attached to any particular Church.

The name *Incardinatus* (*k*) was afterwards exchanged for that of *Cardinalis*, and in early times every Church possessed its *Cardinales*, though probably the appellation was generally confined, as it was in France, to the clergy of the city, or suburbs of the city of the diocese, in fact to the chief advisers of the Bishop, and was not bestowed upon the rural clergy.

When the Church of Rome claimed pre-eminence over all other Churches, it was an evident consequence that her *Cardinals* should be equally distinguished above all others.

It was the duty of the Roman Cardinals not only to govern the Churches of the metropolis of the world, but also to form the council of the chief pastor of that metropolis.

They were not *Cardinals* (*l*) merely because *Incardinati* to different parishes in Rome, but also, and principally, because these parishes constituted in their aggregate that

(C) Also *Intitulatus*.
(*l*) C. 1. Dist. xxii.
C. 3, Dist. xxiv.
C. 5, Dist. lxxi.
C. 6, Dist. lxxiv.
C. 13, Dist. lxi.
C. 3-5, Dist. lxxix.
Roman Church which was the head, the centre, the hinge (cardo) of all the Churches of the world. These Cardinals, though but simple priests and deacons as to their order, claimed jurisdiction over the inferior Bishops of the Roman See. Afterwards the Bishops of seven contiguous and suburban sees (episcopi suburbicarii) were added to the number of Cardinals.

The Pope was at first, like other Bishops, elected by the clergy and laity of the city, the choice being ratified by the Emperors; then, as we have seen, for a time the Emperor usurped the right of nomination, and finally the election was left to the regulations of the Roman See. In the Council held at Rome under Pope Nicolas II. (A.D. 1059), the principal authority in electing the Pope was conferred on the Cardinal Bishops; Pope Alexander III., in the third Council of Lateran (A.D. 1179), excluded the people and the clergy from all share in the elections, and made equal the right of the Cardinal Bishops, Priests, and Deacons. Thus the election of the Pope fell into the hands of the College of Cardinals, with whom it has ever since remained.

CCCCXXVIII. The appointment of the Cardinals is made by the Pope.

To borrow the language of a learned French canonist (n): "Comme il n'y a que les Cardinaux qui créent le Pape, il n'y a aussi que le Pape qui crée les Cardinaux; c'est un principe établi par tous les canonistes."

Nevertheless, as a matter of usage, the Pope does not create cardinals before the advice and the suffrages of the College of Cardinals, have been obtained in consistorio secreto. The Council of Basle required that the election of Cardinals should be conducted by the way of scrutinium and

---

(m) D. de Maillane, i. 403. "Cardinal."
(n) Ibid. i. 408. "Cardinal."
publicatio, with the suffrage in writing of the majority of the Cardinals assembled in their collegiate capacity, non autem per voto auricularia. This rule has been only partially followed. The creation of Cardinals is not held to resemble the election of prelates.

The number of Cardinals has greatly varied; originally it was about fourteen or fifteen, commensurate with the Churches and parishes served by the priesthood and diocesane of Rome; others were added by Pope Marcellus, who fixed the number at twenty-five.

The schism at Avignon (A.D. 1307–77) led to the extension, as both the French and the Roman Popes were anxious to increase the number of their partisans.

After the death of Pope Martin V. (A.D. 1431), the Cardinals agreed in conclave upon certain articles, the effect of which being to admit the Cardinals to share the revenues and the jurisdiction, both spiritual and temporal, of the Papacy, did, according to high authority, permanently alter the conditions both of the sovereignty itself (Signoria stessa) and of the temporal government of the Popes (o).

The Council of Basle (A.D. 1434), among various other regulations with respect to the Cardinals, fixed their number at twenty-four, and forbade any increase, "nisi pro magna " Ecclesiae necessitate vel utilitate" (p). The Popes, however, utterly disregarded this rule; Leo X. created twenty-one in a single day, in consequence of a conspiracy formed against him, the leader of which was a Cardinal. Paul IV. fixed the number at forty (q).

Sixtus V. made what was intended to be a final regulation on this subject by a Bull promulgated in 1586, fixing the

(o) Farini, Lo Stato Romano, iv. 323–5. Lettera IX. al G. Gladstone. See these important articles in extenso; he calls them the Magna Charta of the Papal Monarchy.
(q) By an Indultum, which is known by the name Compactum.
number of Cardinals at seventy, and dividing them into three orders:

1. The first, Cardinal Bishops, being in number six.
2. The second, Cardinal Priests, being in number fifty.
3. The third, Cardinal Deacons, being in number fourteen.

Since this regulation, the number appears to have been increased to seventy-two—one being added to the Cardinal Bishops, and one to the Cardinal Deacons. But the number is not necessarily or usually filled up.

The Council of Trent decreed that the qualifications as to morals, doctrine, and learning, which they had already specified as needful for the office of Bishop, should be required for that of the Cardinals, "quos S. S. Pontifex ex omnibus Christianis nationibus, quantum commode fieri "poterit, prout idoneos repererit, assumet" (r).

This recommendation or direction evidently tended to give an international character to the Sacred College. It appears, too, that it was the habit of certain nations to choose a Cardinal as the protector of their national ecclesiastical interests; and probably from hence grew up the custom which prevails to this day, that the Sovereigns of certain kingdoms are allowed to nominate a Cardinal (s) from among their own subjects. In France the new-made Cardinal received the insignia of his dignity from the King or his chancellor (t).

CCCCXXIX. The principal function and privilege of the Cardinal is to give his vote for the election of the Pope—a right incident to every Cardinal who has received the order of deacon, or who has solicited the Pope to bestow upon him that order (u).

---

(r) Sess. xxiv. De Ref. c. i.
Vide post, remarks of Lord Palmerston.

(s) See this claim very distinctly set forth, on the part of France, in 1822, and recognised within certain limits by Pius VII. Artaud, Histoire de Pie VII, t. ii. pp. 583-5.

(t) D. de Maillane, i. p. 408. "Cardinal."

On the tenth day after the death of the Pope, the Cardinals ought to meet in conclave: on the next day the election of the new Pope begins (x). The Cardinals present in conclave are not bound to await the arrival of those who are absent. Votes cannot be given by proxy. The election is generally per scrutinium (y), on the publication of which the person elected by two-thirds of those present is declared to be the new Pope. If no person be so elected, then the votes are taken again, in accessa, until, by the requisite proportion, some person is elected. It would appear, however, from the account of the proceedings after the death of Pius VII., that the testament of a deceased Pope may, in some degree, contract the mode of his successor’s appointment (z).

(x) Devoti, ibid. p. 260.
(y) According to Devoti, t. i. ss. 18, 19, 20, 21, pp. 271, 272: “Tribus autem modis, alio praeterea nullo, electio perfectur, per scrutinium, compromissum, et quasi inspirationem.”

The per scrutinium is to be by three senators; votes are to be collected, 1, secreto; 2, singillatim; 3, justo ordine; 4, diligentem: compromissum where there is no opposition but all are unanimous: “per quasi inspirationem electio absolvitur cum electores omnes quasi divino spiritu affati in cum repenté feruntur, de quo antea vix cogitaverant.” The first of these three modes appears to be generally in use.

(z) “Ensuite le Cardinal La Somaglia, doyen, dit qu’il avait reçu de son prédécesseur Mattei divers papiers, avec l’ordre de ne les ouvrir qu’après la mort du Pape, et en présence du Sacré Collège rassemblé. Son Eminence décheta le paquet, et il y trouva deux Bref, datés de Fontainebleau. Le Pape, dans le premier, ordonnait aux Cardinaux de se réunir immédiatement sous la présidence du Cardinal doyen, et, en dirigeant à toutes les anciennes constitutions, pour ne considérer que l’empire des circonstances et les dangers de l’Église, d’élire, dans le plus bref délai, un Pape, à la pluralité des voix. Le second Bref portait les mêmes dispositions, avec la différence que le Pape demandait, pour consacrer l’élection, les deux tiers des voix, en conformité de l’ancien usage. Le Secrétaire du Sacré Collège, Monsignor Mazzio, prit alors la parole, et déclara qu’il était dépositaire d’un troisième Bref, dont, par les ordres du Pape, et sous le secret de la confession, il avait été le rédacteur et le seul confidant. Ce Bref portait la date du mois d’octobre 1821. C’était l’époque où le Pape avait lancé la Bulle contre les Carbonari. Le Saint Père ordonnait que l’on procédât à l’élection aussitôt après sa mort, par
It would also appear that the present Pope was much alarmed lest, if he died during the sitting of his Vatican Council, that body should be minded to take part in the choice of his successor, or some other irregularity take place. Accordingly a constitutio was issued by him, *ad tam funestum periculum avertendum,* and confining the election to the Cardinals (a). (December 4, 1869.)

CCCXXX. The duty which ranks next in importance to that of choosing the Pope is that of affording counsel to him and assisting him in the spiritual government of the world.

This duty is performed, 1st, *in consistorio* (b), that is in the assembly of Cardinals at the Papal Palace, in the presence of the Pope; 2nd, *in congregationibus,* that is in certain colleges or committees of different official persons,

acclamation, s'il était possible, et, pour ainsi dire, sur le corps expirant; que cette election se fit en secret, sans attendre les Cardinaux hors de Rome, sans prévenir les ministres accrédités, sans informer les Cours, sans s'occuper des funérailles, avant que l'acte fût consommé. Le Saint Père, avec les expressions les plus pathétiques, recommandait l'union aux Cardinaux, leur rappelait que presque tous étaient ses créatures, et que la reconnaissance, jointe à l'amour de la religion et de la patrie, devait l'assurer de leur obéissance. Ce dernier Bref causa la plus vive sensation. Cependant, toute la congrégation eut la sagesse de reconnaître que les ordres émanés de Sa Sainteté, à l'époque où les suites de la révolution d'Espagne et du Piémont agitaient l'Italie, n'étaient plus applicables aux circonstances actuelles."—Artaud, Histoire du Pope Pie VII, p. 609.

(a) "Motu proprio ac de Apostolicae potestatis plenitudine declaramus, decernimus, atque statuimus quod, si placuerit Deo mortali Nostre peregrinationi, predicto Generali Concilio Vaticano perdurante, finem imponere, electio novi Summi Pontificis, in quibuscumque statu et terminis Concilium ipsum subsistat, non nisi per S.R.E. Cardinales fieri debeat, minime vero per ipsum Concilium, atque etiam omnino exclusus ab eadem electione peragenda quibuscumque allii personis cujusvis, licet ipsius Concilii, auctoritate forte deputandis, præter Cardinales predictos."—Offiz. Akt. II. p. 161, s. xxxi.

(b) It is in the Consistory that the allocations of the Pope are made which are in some degree analogous to royal speeches and public declarations of the Executive in other countries.
over which a Cardinal presides, and to which a certain portion of the Papal Government is delegated (c).

The authority of the decisions of these committees (1) as to matters of doctrine, (2) as to matters of discipline, and (3) as to the adjudication of particular cases, depends, of course, so far as foreign countries are concerned, upon the law of each country in which the Roman Catholic Church is established.

It is only under great limitations, as to the necessary concurrences of the royal, legal, and episcopal authorities, that these decisions have ever been allowed to take effect in France (d).

The same remarks are applicable both as to general usage and, especially the law of France, with respect to the decisions of the tribunal which is concerned with preparing and expediting the Letters Apostolic or Rescripts of the Popes, namely, the Cancellaria, Datarii, and Pænitentiaria (e). So with respect to the highest Roman tribunal, the Rota Romana, which consists of twelve auditores, one French, one Spanish, one German, the rest Italian; it has no authority in France (f). The tribunal of the Signatura Justitiae presides over matters of Appeals, Delegation, and Recusation, and the Rescripts are signed by the Pope. The

(c) Of these congregations some have, or had, for their more especial object municipal and civil matters of the Roman territory, some the ecclesiastical affairs of a particular nation, others the general care of the Roman Catholic Church, viz.:

Congregatio Consistorialis.

Inquisitionis (over which the Pope usually presides.)—
(Devoti, i. p. 171, s. 27.)

Indicis.

Concilii.

Episcoporum ac Regularium.

De Ritibus.

De Indulgentiis et Reliquiis.

De Propaganda Fide.

(d) Lequeux, i. 364, 365, 366.

(e) Neiffenstuel, Jus Can. Univ. l. iii. t. iv. note 577.

(f) "Apud nos nullo exercet jurisdictionem hoc tribunal."—Lequeux, i. 368.
tribunal of the *Signatura Gratiae* has cognizance of matters in which the *favour* of the Pope is sought, and in this tribunal he presides in person.

**CCCCXXXI.** With respect to the rank of the Cardinal (g) at Rome, it is considered next to that of the Pope. For some time *Archbishops* and *Bishops* refused to yield precedence to *Cardinal Priests* and *Deacons*; but from the order of rank observed at the Council of Lyons, A.D. 1245, it appears that precedence was accorded to Cardinals over all dignitaries, including Patriarchs.

When, in 1440, the Archbishop of York was made Cardinal, the Archbishop of Canterbury demurred to his claim for precedence. But the Pope wrote to the latter prelate, that, as the College of Cardinals represented the Apostles, their universal right of precedence was not to be disputed.

Their rank in foreign countries must depend upon the laws and usages of each country, but generally in countries which recognise the supremacy of Rome, their rank has been, with more or less restriction, recognised also.

The Cardinal now resident in England has no rank in that country, but this is probably the consequence of the non-recognition of his mission, and the grievous infraction of International Law with which it was inaugurated. With respect to other Roman privileges of Cardinals, such as those which relate to the holding of benefices and residence at Rome, they are by no means recognised as a matter of course in other countries, and in France they have been denied (h).

---

(g) "C. xiii. s. Sunt autem X. qui filiis, leg. c. xvii. s. Decet de elect. in VI. cardinales, id est cardines orbis consiliarii, fratres, familiares aut filii Pape, cardinales divi, lumina Ecclesiae, &c. denique faciunt unum corpus cum Papa sicut canonici cum Episcopo," &c.—Barbosa, *De Jure Eccles.* 1. i. c. iv. note 1.

(h) "On n'a jamais regardé en France les règlements que les Papes ont faits, touchant la résidence des Cardinaux à Rome, comme une loi que les Cardinaux français fussent obligés de suivre." An eminent magis-
CCCCXXXII. The oath taken by the Cardinals is thus given by De Maillane:—

"Ego—— nuper assumptus in Sancta Romana [Ecclesia] Cardinalem [Cardinatum], ab hae hora in antea ero fidelis beato Petro, universalique et Romanae Ecclesiae, ac summo Pontifici ejusque successoribus canonice intrantibus. Laborabo fideliter pro defensione fidei Catholicae, extirpationeque heresium, et errorum atque Schismatum reformatione, ac pace in populo Christiano: alienationibus rerum et bonorum Ecclesiae Romanae, aut aliarum Ecclesiarum et beneficiorum quorumcunque (non) consentiam, nisi in casibus a jure permissis; et pro alienatis ab Ecclesia Romana recuperandis pro posse meo operam dabo. Non consulam quidquam summo Pontifici, nec subscribam me nisi secundum Deum et conscientiam, qua mihi per sedem Apostolicam commissa fuerint fideliter exequar, Cultum Divinum in Ecclesia tituli mei, et ejus bona conservabo; sic me Deus adjuvet et haec sacrosancta Dei Evangelia"

(i).

CCCCXXXIII. D’Aguesseau wrote a very learned Memoire (k) upon the question whether a French Cardinal, guilty of lèze-majesté, was exempted, on account of his dignity, from the royal jurisdiction (l). This great jurist considers the question under four heads, and the Cardinal

trate at the head of the bar denounced the Bull of Innocent X. as "abusive," they admitted the high rank and dignity of the Cardinal, especially with the Sovereign Pontiff, "auquel ils (les Cardinaux) doivent respect et fidéïté particulière; mais cette obligation, qui est du droit positif et humain, ne peut venir en compétence avec les droits de la naissance et de la nature qui nous attachent de droit divin à nos Souverains, et auquel il n’est pas loisible de résister."—D. de Maillane, i. 413, 414: M. du Clergé, t. vi. p. 1047.

(i) D. de Maillane, i. 413. "Cardinal."


is considered (1) as a Clerk, (2) as a Bishop, (3) as a Cardinal, (4) as the Diocesan, by virtue of his rank in the College of Cardinals; and the result of his examination into all these points is that the Cardinal is subject to the royal jurisdiction: "De quelque côté que l'on considère le "Cardinal, il est également soumis à la puissance et à la "justice du Roi" (m).

The following passages in this elaborate and international treatise are well worthy of attention:—"Comme le Pape "réunit en sa personne la qualité de Prince Souverain à celle "de Chef de l'Église, et que, contre la doctrine et les senti "mens des anciens Papes, il est enfin devenu Roi et Pontife "tout ensemble, les Cardinaux, qui sont ses ministres dans "ces deux qualités, peuvent aussi être considérés sous deux "faces différentes; c'est-à-dire, ou dans leur état ecclésias- "tique, comme principaux ministres de l'Église de Rome, et "assesseurs du Pape dans les affaires ecclésiastiques, ou dans "leur état politique, comme conseil et principaux officiers "d'un Prince étranger" (n). . . . . "Quelle est donc, "suivant ces principes, la véritable situation d'un Français "qui est honoré de la dignité de Cardinal?"

"Il devient, à la vérité, le conseil, le ministre du Pape, "avec l'agrément et presque toujours par la protection du "Roi; il entre par là au service du Pape, il contracte de "nouveaux engagements: mais il ne détruit pas les anciens "qui le lient à sa patrie. Le lien qui l'attache à son premier "maître est d'un ordre supérieur à celui qui l'unit au second; "l'un est naturel, l'autre est purement civil: l'obligation "civile ne détruit pas l'obligation naturelle, et un Cardinal "n'en est pas plus dispensé qu'un Général français qui com- "mande les troupes du Roi Catholique, ou qu'un Duc et Pair "qui a joint à ce titre celui de Grand d'Espagne, ou qu'un "négociant qui va s'établir à Amsterdam ou à Cadiz, par "rapport à son commerce" (o).

(m) D'Aguessaui, ibid. p. 336.
(n) Ibid. p. 290.
(o) Ibid. p. 298.
D'Aguesseau cites eight precedents for the trial of Cardinals by the law of the land:

2. Cardinal Ballue, in the same reign, in whose case there was an elaborate discussion between the Ambassadors of France on the one hand, at the Court of Rome, and the Pope and Cardinals on the other.
4. Cardinal de Guise, executed, without the formalities of justice, by Henri III.
5. Cardinal de Bourbon, executed by the same monarch in a similar manner.
6. Cardinal de Plaisance, sent by Pope Clement VIII. to assist the League against Henri IV. The Cardinal was not a born subject of the Crown, and was an ambassador. It was holden by the Parliament of Chalous that by joining in a conspiracy he had forfeited his privilege as ambassador, and that he was justiciable by reason of the locality of the crime, though not by reason of his birth.
8. Cardinal de Retz (q), "exemple équivoque;" for the King, then scarcely of age, just emerged from the troubles of his minority, first ordered the Parliament to proceed against the Cardinal, and afterwards applied to Rome for commissioners.

The Roman canonists (r) say, that as

(p) D'Aguesseau, ibid. p. 327.
(q) Ibid. p. 330.
(r) Devoti, i. 172, xxix. xxxii.
C. viii. X. De Off. Leg.
C. iii. iv. vi. ix. X. Ibid.
C. xx. X. De Jure Patron.
C. i. VI. De Off. Leg.
C. xxiii. X. De Privileg.
the whole Church of Christ is committed to the charge of the Pope, and as he cannot be present everywhere, it is necessary that he should have deputies armed with his authority and jurisdiction, and hence the institution of *Legates* (s). Legates are of three kinds:—

1. *Legati a latere*.
2. *Legati missi* or *Nuntii*.
3. *Legati nati*.

CCCCXXXVI. *Legati a latere* (t) are Cardinals whom the Pope has sent, as it were, from his own side, either to foreign Princes, or into provinces of the Roman See, clothed with the most ample authority. In the *Decretals*, powers nearly if not quite equal to those of the Pope (u) are conferred on these Legates, and it is provided that they shall continue after the death of the Pope. They were authorised to convene and preside over Councils, with a vote equivalent to that of the whole assembly, to suspend and depose bishops, and to make laws. These extravagances were partly the fruit of the Council of Trent (x), but the laws and practice of independent States have so curtailed and limited them (y) that the office has fallen into desuetude. Nevertheless, after the desolating storm of the first Revolution had passed over the Gallican Church, and Napoleon had again opened communications with Rome, Pius VII. sent *Cardinal Caprara*, in the character of a *Legate a latere*, to France. The French Government admitted him, and with

---

(s) For their early history, see Thomassinus, *Discipl.* pt. i. l. ii. cc. 113, 119. *De Cardinalibus et Legatis*.
(r) *Sess. xxiv.* c. xx. *De Ref.*
(y) "Aucun individu, se disant Nonce, Léguat, Vicaire, ou Commissaire apostolique, ou se prévalant de toute autre dénomination, ne pourra, sans l'autorisation du Gouvernement, exercer sur le sol français, ni ailleurs, aucune fonction relative aux affaires de l'Église gallicane."—*Artic. organiques*, art. ii.

*Walter, Kirchenrecht*, s. 143.
*Thomass. Discip. ubi supr.*
very large honours, which, however, they partially circumscribed by denying to him the faculty of acting by delegate (subdelegandi) (z).

These Legates are ambassadors of the first rank.

CCCCXXXVII. *Legati missi*, or *Nuntii*, are Papal ambassadors appointed for the execution of some particular business in foreign parts, with powers limited by their credentials.

*Nuntii Apostolici* are resident Papal ambassadors at foreign Courts (a).

*Nuntii* are ambassadors of the second rank, though sometimes furnished “cum potestate Legati a latere.”

*Internuntii* are those who are appointed provisionally, or who are resident in provinces in which the Sovereign is not present. These are ambassadors of the third rank. For the transaction of matters of minor moment *Ablegati* are sometimes dispatched from Rome.

The chief duties of the Legate or Nuncio are, to watch over the interests of the Roman See, to apprise the Pope of all matters of moment passing at a foreign Court, and to obtain canonical information respecting the Bishops nominated by the Crown (b). They have no jurisdiction unless by the permission of the State to which they are sent (c).

---


(a) *Vide ante*, p. 189, note (k), formerly *apocrisiarui* or *responsales*, Nov. 123, c. 25.

(b) “*Nullum apud nos Nuntii jurisdictionis actum exercent.*”—Lequeur, i. 380.

(c) “*Ihre Vollmachten hängen von ihren besonderen Instructionen, ihre Zulassung von der Regierung des betreffenden Landes ab.*”—Walter, Abschn. 144.

*C. un. Extr. Comm. de Consuet.* i. 1, is now held contrary to the *jus commune* of the Church and of States.
Their powers, therefore, no longer depend upon one general law, but upon the particular instructions given to them, and on the law and usage of the country to which they are sent. This has been the consequence of the dispute at the close of the last century with respect to perpetual or standing nuntiaturas (d).

CCCXXXVIII. The title of Legati nati (e) was conferred upon certain foreign dignitaries, to whose See or Crown the power and office of Legate was perpetually annexed. Such were the Archiepiscopates of Rheims, Bordeaux, and Lyons in France; of Canterbury and York in England: of Toledo and Tarragona in the Spanish peninsula; of Salzburg, Cologne, and Prague in Germany; of Pisa in Italy; the Crown of Hungary and the Crown of the Two Sicilies—apostolica regni Sicilie Legatio (f).

In process of time it was found that the Papal power was rather weakened than strengthened by these perpetual and unchangeable Legates, and it is probable that the provisional title is the only memorial of former authority which they now retain; except, indeed, in the case of the Crown of Hungary, for Pope Sylvester conferred this privilege upon King Stephen (g); except, also, in the case of the King of the Two Sicilies. This privilege of the Sicilian Monarchy is founded upon a Bull of Urban II. to Roger (1099), and was expressly confirmed by a Bull of Benedict XIII. (1728). The King used to exercise jurisdiction as Legate through a special tribunal of his own (Monarchia Sicula).

(d) Pachmann, Lehrbuch des Kirchenrechts, s. 182.
(e) Denoti, i. 175.
(f) Walter, Kirchenrecht, Abschn. 144: "Doch hängen nur Ehrenrechte davon ab."
(g) "Sich das Kreuz, als Zeichen des Apostolats allenthalben vortragen zu lassen, und nach dem Masse der göttlichen Gnade, und als Stellvertreter des Papstes, die gegenwärtigen und künftigen Kirchen des ungarischen Reiches einzurichten, zu ordnen, und mit Vorzügen auszuzeichnen."—Benedict XIV, De Synod. Dioc. l. ii. c. vi. cited by Pachmann, s. 181.
The *Commissarius Apostolicus*, sometimes called *Delegatus*, is an officer dispatched by the Pope to obtain information upon a particular matter.

The *Vicarius Apostolicus* is an officer through whom the Pope exercises authority in parts remote, and who is sometimes sent with episcopal functions into provinces where there is no Bishop resident, or where there has been a long vacancy of the see, or in infidel or heretical countries (*h*).

The *Prefecti Apostolici* are officers of the same character, but without the power of exercising episcopal functions.

CCCCXXXIX. There remains the question as to whether the Pope may be deposed for his offences, and by whom?

In the case of any other Sovereign, such a question would not properly be answered in any treatise on International Law. First, because it is a question rather of Public than of International Law; and secondly, because it is neither prudent nor right to attempt to lay down rules for a case which, if it ever happen, must be superior to all rule, save that which the necessity itself may suggest and justify. But the character of the Pope as Universal Spiritual Chief gives foreign countries a direct interest in that question; and, moreover, it is one which has undergone consideration, and of which a solution has been attempted.

Here, again, as in so many matters relating to the Pope, there are two distinct opinions maintained by *ultra* and *cis-montane* canonists. The former maintain the impossibility of the Pope's trial or deposition on account of his infallibility and of his superiority to every earthly tribunal. The latter hold the superiority of General Councils of the Church to the Pope, the possibility of his erring, and that he is not exempt from the *jus commune* whereto every Bishop or

*(h) The right to nominate these officers rests upon the Pope's claim to universal jurisdiction, and on what is called by canonists the *jus devolutionis*.—Walter, *ib.*
dignitary of the Church is canonically responsible for certain offences, and that bad Popes have been lawfully deposed both by Emperors and by Councils.

The Council of Basle distinctly asserted three propositions:—

1. That a General Council was superior to the Pope, and that he owed obedience to it.
2. That he might be punished (debite puniatur) for disobedience to it.
3. That by this Council the Cardinals are enjoined to remonstrate first personally, then in their collegiate capacity, with an erring Pope, and lastly, to denounce him, if he do not amend, at the next General Council (i).

"Non nostrum inter vos tantas componere lites."

But it is necessary to add that, both in the convocation and in the proceedings of a General Council, all Christian nations must be interested.

CCCCXL. In 1849, during the civil wars in Italy, the English Minister for Foreign Affairs carried on a very important correspondence with our ambassador abroad, in which he made the following, among other observations:—

1. That England would not, on account of her Roman Catholic subjects, view with indifference what was passing in the Roman States (k).
2. That she desired that the Pope should occupy an independent temporal position, in order that he might not become the political instrument of any one European Power (l).
3. That there was, nevertheless, a great difficulty in making the Roman States an exception to the general rule

(k) Vide ante, vol. i. p. 530.
(l) See the opinion of Portalis, Discours sur l'Organisation des Cultes, Discours, etc., par le Vicomte F. Portalis, s. 33 (Paris: 1845).
of non-interference between any foreign people and their Sovereign.

4. That the position of the Pope differed from that of other Sovereigns, as he was elected by the College of Cardinals, a body neither national in its constitution nor in its membership.

5. That the Pope ought to give his subjects securities for good government.

6. That for that object a separation should be made between the spiritual authority and the temporal powers and institutions of the State.

7. That an armed intervention to assist the Pope in retaining a bad Government would be unjustifiable (m).

(m) Correspondence between Viscount Palmerston, the Marquis of Normanby, and Prince Castalgicala, laid before Parliament, June 15, 1849; and see Correspondence affecting the affairs of Rome, presented to Parliament April 14, 1851, and 1870-71.
CHAPTER XI.


CCCCXLI. In the time of Pope Gregory the Great (b) (a.d. 595), and while Maurice was Emperor of Constantinople, John, the Patriarch of Constantinople, openly assumed the title of Universal Bishop, claiming thereby apparently a spiritual supremacy over the whole Christian world (c). The letters written by Gregory to the Emperor, to the Patriarch, and to certain Bishops, are among the most valuable monuments of Ecclesiastical History, and, indeed, of Ecclesiastical International Law.

These letters of this illustrious (d) prelate, in which he denies the right of any Patriarch or Bishop to arrogate to himself the title of Universal Bishop, and denounces the usurper of this foolish, offensive, and unchristian appellation as the precursor of Antichrist (e), will well repay the perusal

(a) Walter's Kirchenrecht, ss. 168-173. Verfassung der Morgenländischen Kirche.—"Geschichte der kirchlichen Trennung zwischen dem Orient und Occident. Von den ersten Anfängen bis zur jüngsten Gegenwart."—Von Dr. A. Pichler (München, 1864), a work, in two volumes, of great erudition and research.

(b) His Pontificate lasted from a.d. 590 to a.d. 604.

(c) Vide ante, p. 332.

(d) The blot upon his character is his adulatory letter to the wretch Phocas; but even Gibbon says that "Gregory might justly be styled the Father of his Country."—Decline and Fall, vol. viii. p. 176 (ed. Milman).

(e) L. vii. ep. xxxiii.: "Eundem vero fratrem et coepiscopum meum studiose admonere curavi, uti habere pacem omnium concordianque desiderat ab stupi vocabuli se appellatione compescat." . . . "Ego autem fidenter dico, quia quisquis se Universalem Sacerdotem vocat, vel vocari desiderat, in elatione sua antichristum procurrit, quia superbiendo se ceteris preponit."
of all who take an interest in those events which combine some of the most remarkable features of civil and ecclesiastical history (f).

CCCCXLII. More than a century passes away between the Pontificate of Gregory I. (the Great) and that of Gregory II. (g) But both Popes were brought into especial contact with the Patriarchate of Constantinople. According to the opinion of Gibbon, certainly important on this point, the Patriarchs of Rome and Constantinople were at this time nearly equal in ecclesiastical rank and jurisdiction (h). But the Greek Patriarch was under the immediate yoke of a tyrannical Prince, which the distant Roman Patriarch had been long striving to shake off.

When the imperial iconoclast, Leo, was making that assault upon the devotional use of images, which—trifling as it seems to the infidel historian—was fraught with serious consequences to the future peace of Christendom, he received from Gregory II. a letter, which contains a passage bearing upon the present subject: “Are you ignorant” (Gregory writes) “that the Popes are the bond of union, the mediators of peace between the East and West?” (i) When the

Ep. xxxi.: “Ut verbum superbiae, per quod grave scandalum in Ecclesiis generatur, auferre festinetis.”

Some expressions of the kind occur in most of the ten letters.

(f) The reader is referred to:—
Lib. v. ep. xviii. (Ad Johannem Episcopum.)
Ep. xix. (Ad Sabiniannm Diaconom.)
Ep. xx. (Ad Maurivium Augustum.)
Ep. xvi. (Ad Constantinam Augustam.)
Ep. xliii. (Ad Eulogium et Anastasium Episcopos.)
Lib. vii. ep. xxvii. (Ad Anastasium Episcopum.)
Ep. xxxi. (Ad Cyriacum Episcopum.)
Lib. viii. ep. xxxii. (Ad Maurivium Augustum.)
Lib. viii. ep. xxx. (Ad Eulogium Episcopum Alexandrinum.)
Lib. xiii. ep. xi. (Ad Cyriacum Patriarchem Constantinopol.)
Sancti Gregorii Papae I. Cosnmento Magni Opera Omnia, t. ii. (Parisiiis: Sumptibus Claudii Rigaud, 1705.)

(g) Extended from a.d. 715 to 731.
(h) Decline and Fall, vol. ix. p. 131.
(i) Gibbon, vol. ix. p. 136. At p. 134 he has this note: “The two epistles of Gregory II. have been preserved in the Acts of the Nicene
iconoclast had ceased to reign, the power of the Byzantine Emperor in Italy had dwindled into the Exarchate of Ravenna, and was practically confined within the walls of that city.

The restoration of the Western Empire by Charlemagne, which has been mentioned in the preceding pages (k), was followed by the separation of the Latin and Greek Churches. In what degree a difference of religious opinion upon the most inscrutable of mysteries, national animosity, and arrogance on the part of Rome contributed to produce that schism, which the lapse of ten centuries finds unhealed, it is not within the compass of this work to consider.

In the turbulent period between A.D. 857-886, Pope Nicholas I. and the Patriarch Photius had mutually denounced and deposed each other. But it was not until A.D. 1054 that the Pope sent his legates to excommunicate formally the Church of Greece and the Patriarch of Constantinople in his own metropolis, and to deposit the Latin anathema on the altar of Saint Sophia. The failure of the attempt to reunite the two Churches at the Council of Florence (A.D. 1439) has been previously noticed (l).

The conquest of Constantinople by the Turks (A.D. 1453) was followed by that long and cruel oppression of the Greek Church, from which she has been, during the last few years, in great measure relieved.

The Patriarch of the East has not renewed that claim to the title of Universal Bishop which drew down upon him the just rebuke of the Patriarch of the West.

---

(k) Vide ante, pp. 334-337.
(l) Vide ante, p. 377.
Pichler, i. 390-398, ss. 68-73.
Gibbon, c. 46, p. 95, &c.; c. 47, p. 145.
Syropulus, Vera Historia Unionis non verae inter Graecos et Latinos.
Popoff, Hist. of Council of Florence, translated by Neale.
CCCXLIII. The relations of the Church in the Kingdom of Greece to the Patriarch and Holy Synod of Constantinople form a subject of great interest to the churchman and theologian and are not without interest to the International jurist.

Previously (m) to the establishment of Greece as an independent kingdom, the Patriarch and the Holy Synod of Constantinople exercised supreme authority over those countries or states which now compose that kingdom. During the war with Turkey which preceded the establishment of this kingdom, this authority ceased de facto. The Greeks refused to acknowledge even a spiritual power the holder of which resided in the territory of their enemy and oppressor. But in 1828 the Patriarch and the Synod invited Greece to renew her spiritual and ecclesiastical relations with the Patriarchal Throne. Greece, in her reply and in the first article of her declaration of August 4 (July 23), 1833 (n), asserted her ecclesiastical independence.

This declaration of independence, confirmed by the Greek Constitution of 1843, caused the Greek Church to remain for seventeen years unrecognised by the ancient Church, represented by the Patriarch and Synod of Constantinople. But the people of Greece, whatever certain theologians and statesmen might maintain, were uneasy at and distressed by this condition of isolation, and in 1850 the Greek Government opened negotiations with the Patriarch. The result was that the Patriarch, with certain not unimportant reservations, conceded the ecclesiastical independence of the Greek Church.

The Concordat or Treaty—if an unilateral act can so be designated—bore the name of τοιχος, equivalent to a Bull, and was signed at Constantinople, June 17 (29), 1850 (o).

(m) Recueil de Traités, Samuer, t. ii. p. 421.
(n) De Martens (N.R.) xii. p. 568.

The documents relating to this event were also printed in a modern Greek journal called the Αιων, and are translated in the April number of the Scottish Ecclesiastical Journal for 1851.
By the Treaty \((p)\) concluded at London, November 20, 1852, between France, England, Russia, Greece, and Bavaria, for the consolidation of the order of succession to the throne of Greece, it was agreed by the first article "that every “successor to the throne of Greece must profess the religion “of the Orthodox Oriental Church.”

By the decree of the National Assembly of Greece, March 30, 1863, which proclaimed Prince George of Denmark King of the Greeks, it was determined, by the second article, “that the legitimate successors of King George “should profess the dogmas of the Orthodox Oriental “Church”\((q)\).

On July 13, 1863, a convention was signed at London by Denmark on the one part, and on the other by France, England, and Russia, relative to the succession of King George I. to the throne of Greece, by the seventh article of which it was set forth “that, in conformity with the “principles of the Hellenic Convention, recognised by the “Treaty signed at London of the 20th of November, 1852, “and proclaimed by the decree of the National Assembly of “Greece, the legitimate successors of King George I. shall “profess the faith of the Orthodox Church of the Greeks ”\((r)\).

The Christian Powers have intervened to secure the welfare of Christians—Roman Catholic, Catholic, and Protestant—both in the territories of the Sultan generally\((s)\) and also in the district of Lebanon \((t)\).

---

\(p\) Samwer, t. iv. partie 2, p. 70.

\(q\) Ibid. 76, and Archiv. dipl. 1863, ii. 206.

\(r\) Samwer, p. 80.

\(s\) 1852, Firman as to the Holy Places; 1853 (May), Explanatory Firman as to reparation of Cupola of Church of the Holy Sepulchre; 1853 (June), Firman confirmatory of the religious privileges of Protestants; 1853 (June 5), Firman confirmatory of the religious privileges of the Greek subjects of the Porte; 1856 (Feb. 18), Firman as to the condition of Christian subjects of the Porte.—Ibid. t. ii. 494, 501, 508.

CCCCXLIII (a). The increasing intimacy of the relations between the Anglican and Greek Churches may hereafter render the intervention of England, on behalf of the members of the Greek Church in the Ottoman dominion, as justifiable as the intervention of the Roman Catholic Powers on behalf of the Pope, both in his present exclusively spiritual, and in his former mixed spiritual and temporal character (α).

CCCCXLIII (b). (x) Though it may not be easy to define precisely the existing relations of the Patriarch of Constantinople to the Russian Church, it is a mistake, fostered by

(u) INTERCOMMUNION OF GREEK AND ENGLISH CHURCHES.


1842 (Vide ante, p. 482). Foundation of Jerusalem Bishopric—Letter of Archbishop of Canterbury to the Greek Patriarch.


"Archbishop of Syra and Tenos: 'When I return to Greece I will say that the Church of England is not like other Protestant bodies. I will say that it is a sound Catholic Church, very like our own: and I trust that, by friendly discussion, union between the two Churches may be brought about.'"


Reply of the Russian Synod to the United States Episcopate.—Col. Ch. Chron. April 1, 1871.


The Times, August 21, 1854, refers to a letter said to be written by the Patriarch Anthimus, during the Crimean War, to the Greek Church, in praise of the defence of Turkey by the European Powers against Russia.
ultramontane writers, to suppose, because exercises no jurisdiction over that Church formal or actual separation between the are not bound together by a common chain discipline (y). The claim of the Emperor of those subjects of the Porte who are member Church, has been already considered (z).

CCCCXLIV. It is remarkable that, not long after the Papal aggression in England, which has been just discussed, Pius IX. made an attack of a similar character upon the Eastern Church.

On the 6th of January, 1848, he issued "an Encyclical Letter of the One Holy Catholic and Apostolic Church to the Orthodox in all parts," in modern Greek, "to the Easterns," containing some very unfortunate errors,—among others, a reference to the Council of Carthage, instead of Chalcedon (a); but neither this mistake nor the modern Greek appears to have been the cause of the great irritation and offence caused by this memorable epistle,—of which it is now not easy to obtain a copy;—it was the assumption of authority, the implicit denial of the Greek Episcopate, which roused this long-oppressed Church, and caused it to return, in classical Greek, an answer, which will never be forgotten, "of the Orthodox Eastern Church to the Encyclical Epistle of His Holiness the Pope of Rome lately sent to the Easterns." This answer corrected the historical errors of the Pope, and enumerated the offences...
against the unity and peace of the Church committed by Rome, while it vindicated the faith of the Greek Church in a manner worthy of its best days (b). The more recent attempt of the Pope to induce the Patriarch to acknowledge the œcumenicity of the Vatican Council and the authority of the Pope has been equally unsuccessful (c).

(b) Scottish Ecclesiastical Journal, January, 1851.

The signatures to the Eastern Encyclic are as follows:—

“Anthimus, by the mercy of God, Archbishop of Constantinople, New Rome, and œcuminal Patriarch, in Christ our God a beloved brother and bedesman.”

“Hierotheus, by the mercy of God, Patriarch of Alexandria and of all Egypt, in Christ,” &c.

“Theodore, by the mercy of God, Patriarch of the great city of God, Antioch, and of all the East, in Christ,” &c.

“Cyril, by the mercy of God, Patriarch of Jerusalem and of all Palestine, in Christ,” &c.

**THE HOLY SYNOD IN CONSTANTINOPLE.**

<table>
<thead>
<tr>
<th>Paisius of Césarea.</th>
<th>Theocletus of Berrhæa.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anthimus of Ephesus.</td>
<td>Meletius of Pisidia.</td>
</tr>
<tr>
<td>Dionysius of Heraclea.</td>
<td>Athanasius of Snyrna.</td>
</tr>
<tr>
<td>Joachim of Cyzicus.</td>
<td>Dionysius of Melonicus.</td>
</tr>
<tr>
<td>Dionysius of Nicomedia.</td>
<td>Paisius of Sophia.</td>
</tr>
<tr>
<td>Cyril of Neocræsæa.</td>
<td>Anthimus of Bodena.</td>
</tr>
</tbody>
</table>

**THE HOLY SYNOD IN ANTIOCH.**

<table>
<thead>
<tr>
<th>Zacharias of Arcadia.</th>
<th>Joannicius of Tripolis.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methodius of Emesa.</td>
<td>Artemius of Laodicea.</td>
</tr>
</tbody>
</table>

**THE HOLY SYNOD IN JERUSALEM.**

<table>
<thead>
<tr>
<th>Meletius of Petra.</th>
<th>Thaddeus of Sebaste.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Samuel of Neapolis.</td>
<td></td>
</tr>
</tbody>
</table>

(c) For documents relating to the question of the Encyclics of Pope Pius IX., in 1848 and 1868, to the Greek Church, and the Replies of the Patriarch of Constantinople:—

As to the former period, see—
On behalf of Rome.

1. Lettere ad orientales, Jan. 6, 1848. *Offizielle Aktenstücke*, u.s.w. p. 127.

On behalf of the Greek Church.


(In the Italian language only.)


(In the Greek language.)

5. Εγκυκλίος της μιας Αγιας Καθολικής και Αποστολικής Εκκλησίας Επιστολη, προς τους Απανταχον Ορθοδόξους. Εν Κωνσταντινουπόλει, εκ της Πατριαρχίας του Γενός Τυπογραφίας. 1848.

This has been translated into English and German. See Papers of the Russo-Greek Committee, second series, No. 1. New York: Trow & Co., 1867. *Offizielle Aktenstücke*, i. 127: Berlin, 1869.

As to the latter period, see—


And see Appendix to this volume.
CONTENTS OF APPENDIX.

I. PAGE 73.
   Treaty of London, 1871 ........................................ 515

II. PREFACE.
   Treaty between Great Britain and the United States of America, 1871 520

III. PAGE 16.
   Communications with France and Spain relating to the Spanish American
      Provinces ......................................................... 536
   Reply of Mr. Canning as to the Russian Memoir on the Pacification of
      Greece ............................................................ 551
   Protocol of February 19, 1831 .................................... 553

IV. PAGE 46.
   Breaches of Foreign Municipal Law not cognizable in the Courts of Eng-
      land or the United States .................................... 558

V. PAGE 89.
   Interpretation of Treaties ........................................ 566

VI. PAGE 127.
   Rights of Sovereigns. Decisions in the French Courts ............. 608

VII. PAGE 155.
   Rights of Ambassadors ............................................ 626

VOL. II. 

CONTENTS OF APPENDIX.

VIII. Page 301.
Consuls. Decisions in the French Courts 648

IX. Page 338.
International Relations of Foreign Spiritual Powers with the State.
The Pope 654
Letter to Guizot from Rossi at Rome 658
Correspondence respecting the affairs of Rome, 1849 662
Circular of Antonelli 674
Encyclic and Syllabus 675
Circular of Italian Minister for Foreign Affairs 692
Letter of Italian Minister at Brussels 694
Letter of Spanish Minister of State 696
Statute of Guarantees 698
Encyclic on Guarantee Statute 702
New Laws as to the Italian Clergy 708
Debate in the French Assembly 708

X. Page 488:
Regulations of the College of Cardinals 729
Memoir of D'Aguesseau upon the Royal Jurisdiction over a Cardinal 731

XI. Pages 503–10.
Relations between the Greek and Foreign Churches 736
APPENDICES.

APPENDIX I.

Treaty between Her Majesty, the Emperor of Germany, King of Prussia, the Emperor of Austria, the French Republic, the King of Italy, the Emperor of Russia, and the Sultan, for the Revision of certain Stipulations of the Treaty of March 30, 1856.

Signed at London, March 13, 1871.

[Ratifications exchanged at London, May 15, 1871.]

In the Name of Almighty God.

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Germany, King of Prussia, His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary, The Chief of the Executive Power of the French Republic, His Majesty the King of Italy, His Majesty the Emperor of all the Russias, and His Majesty the Emperor of the Ottomans, have judged it necessary to assemble their Representatives in Conference at London, in order to come to an understanding, in a spirit of concord, with regard to the revision of the stipulations of the Treaty concluded at Paris on the 30th March, 1856, relative to the navigation of the Black Sea, as well as to that of the Danube; being desirous, at the same time, to ensure in those regions new facilities for the development of the commercial activity of all nations, the High Contracting Parties have resolved to conclude a Treaty, and have for that purpose named as their Plenipotentiaries, that is to say . . .

"Who, after having exchanged their full powers, found in good and due form, have agreed upon the following Articles:

"Art. 1.—Articles XI. XIII. and XIV. of the Treaty of Paris of March 30, 1856, as well as the special Convention concluded between Russia and the Sublime Porte, and annexed to the said Article XIV., are abrogated, and replaced by the following Article:
"Art. II.—The principle of the closing of the Straits of the Dardanelles and the Bosphorus, such as it has been established by the separate Convention of March 30, 1856, is maintained, with power to His Imperial Majesty the Sultan to open the said Straits in time of peace to the vessels of war of friendly and allied Powers, in case the Sublime Porte should judge it necessary in order to secure the execution of the stipulations of the Treaty of Paris of March 30, 1856.

"Art. III.—The Black Sea remains open, as heretofore, to the mercantile marine of all nations.

"Art. IV.—The Commission established by Article XVI. of the Treaty of Paris, in which the Powers who joined in signing the Treaty are each represented by a delegate, and which was charged with the designation and execution of the works necessary below Isaktetcha, to clear the mouths of the Danube, as well as the neighbouring parts of the Black Sea, from the sands and other impediments which obstruct them, in order to put that part of the river and the said parts of the sea in the best state for navigation, is maintained in its present composition. The duration of that Commission is fixed for a further period of twelve years, counting from April 24, 1871, that is to say, till April 24, 1883, being the term of the redemption of the loan contracted by that Commission, under the guarantee of Great Britain, Germany, Austria-Hungary, France, Italy, and Turkey.

"Art. V.—The conditions of the re-assembling of the Riverain Commission, established by Article XVII. of the Treaty of Paris of March 30, 1856 shall be fixed by a previous understanding between the Riverain Powers, without prejudice to the clause relative to the three Danubian Principalities; and in so far as any modification of Article XVII. of the said Treaty may be involved, this latter shall form the subject of a special Convention between the co-signatory Powers.

"Art. VI.—As the Powers which possess the shores of that part of the Danube where the Cataracts and the Iron Gates offer impediments to navigation reserve to themselves to come to an understanding with the view of removing those impediments, the high contracting parties recognize from the present moment their right to levy a provisional tax on vessels of commerce of every flag which may henceforth benefit thereby, until the extinction of the debt contracted for the execution of the works; and they declare Article XV. of the Treaty of Paris of 1856 to be inapplicable to that part of the river for a space of time necessary for the repayment of the debt in question.

"Art. VII.—All the works and establishments of every kind created by the European Commission in execution of the Treaty of Paris of 1856, or of the present Treaty, shall continue to enjoy the same neutrality which has hitherto protected them, and which
APPENDIX I.

shall be equally respected for the future, under all circumstances, by the High Contracting Parties. The benefits of the immunities which result therefrom shall extend to the whole administrative and engineering staff of the Commission. It is, however, well understood that the provisions of this Article shall in no way affect the right of the Sublime Porte to send, as heretofore, its vessels of war into the Danube in its character of territorial Power.

Art. VIII.—The High Contracting Parties renew and confirm all the stipulations of the Treaty of March 30, 1856, as well as of its annexes, which are not annulled or modified by the present Treaty.

Art. IX.—The present Treaty shall be ratified, and the ratifications shall be exchanged at London in the term of six weeks (a), or sooner if possible.

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

Done at London, the thirteenth day of the month of March, in the year one thousand eight hundred and seventy-one.

(L.S.) GRANVILLE.
(L.S.) BERNSTORFF.
(L.S.) APPONYI.
(L.S.) BROGLIE.
(L.S.) CADORNA.
(L.S.) BRUNNOW.
(L.S.) MUSURUS.

Procès-Verbal of Exchange.

The undersigned having met together for the purpose of exchanging the ratifications of the Treaty concluded and signed on the 13th of March, 1871, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Germany, King of Prussia, His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary, the Chief of the Executive Power of the French Republic, His Majesty the King of Italy, His Majesty the Emperor of all the Russians, and His Majesty the Emperor of the Ottomans, for the revision of the stipulations of the Treaty of the 30th of March, 1856, relative to the navigation of the Black Sea, as well as to that of the Danube; and the respective ratifications having been carefully compared and found in good and due form, the exchange took place this day in the usual form.

The Plenipotentiaries of Russia and of the Sublime Porte, at

(a) This period was afterwards extended to the 15th of May.
the same time, exchanged the ratifications of the Convention concluded between their respective Courts, on the 13th of March, for abrogating the stipulations of that signed at Paris on the 15th of March, 1856, relative to the number and force of the vessels of war of the Riverain Powers in the Black Sea; and communicated that Convention to the Conference, according to the terms of the Protocol No. 5, of the 13th March.

In witness whereof the undersigned have signed the present Proces-Verbal of Exchange, and have affixed thereto the seal of their arms.

Done at London, the 15th of May, 1871.
(Signed)  
" (L.S.) GRANVILLE.  
" (L.S.) BERNSTORFF.  
" (L.S.) A. WOLKENSTEIN.  
" (L.S.) BROGLIE.  
" (L.S.) CADORNA.  
" (L.S.) BRUNNOW.  
" (L.S.) MUSURUS."

Convention between Russia and Turkey, signed at London, March 13, 1871.

(Communicated to the Conference, on the exchange of the Ratifications, May 15, 1871.)

In the Name of Almighty God.

His Majesty the Emperor of all the Russias and His Imperial Majesty the Sultan, being mutually animated with the desire to consolidate the relations of peace and good understanding happily existing between their Empires, have resolved to conclude for this purpose a Convention, and have named to that effect as their Plenipotentiaries, that is to say, . . . .

Who, after having exchanged their full powers, found in good and due form, have agreed upon the following Articles:—

Art. I.—The Special Convention concluded at Paris between His Majesty the Emperor of all the Russias and His Imperial Majesty the Sultan, on the 15th of March, in the year one thousand eight hundred and fifty-six, relative to the number and force of the vessels of war of the two High Contracting Parties in the Black Sea, is and remains abrogated.

Art. II.—The present Convention shall be ratified, and the ratifications shall be exchanged at London in the space of six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.
"Done at London, the 1st (13th) day of the month of March, in
the year one thousand eight hundred and seventy-one.
" (L.S.) BRUNNOW.
" (L.S.) MUSURUS.
" A true copy from the original.
(Signed) " THE COUNT DE BRUNNOW,
" London, May 3 (15), 1871." Ambassador of Russia.

Convention between Turkey and Russia, signed at London,
March 13, 1871.

(Communicated to the Conference, on the exchange of the
Ratifications, May 15, 1871.)

In the Name of Almighty God.

"His Imperial Majesty the Sultan and His Majesty the Emperor
of all the Russias, being mutually animated with the desire to
consolidate the relations of peace and good understanding happily
existing between their Empires, have resolved to conclude for
this purpose a Convention, and have named to that effect as their
Plenipotentiaries, that is to say, . . . .
"Who, after having exchanged their full powers, found in good
and due form, have agreed upon the following Articles:

"Art. I.—The Special Convention concluded at Paris on the
13th of March, in the year one thousand eight hundred and
fifty-six, between His Imperial Majesty the Sultan and His
Majesty the Emperor of all the Russias, relative to the number
and force of the vessels of war of the two High Contracting Par-
ties in the Black Sea, is and remains abrogated.

"Art. II.—The present Convention shall be ratified, and the
ratifications shall be exchanged at London in the space of six
weeks, or sooner if possible.

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

"Done at London, the 1st (13th) day of the month of March in
the year one thousand eight hundred and seventy-one.

" (L.S.) MUSURUS.
" (L.S.) BRUNNOW.

" A true copy from the original.
(Signed) " MUSURUS.
" Ambassador of Turkey.

" London, May 15, 1871."
APPENDIX II.

TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA.

(Signed at Washington, May 8, 1871.)

"Her Britannic Majesty and the United States of America, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed their respective Plenipotentiaries, that is to say:—"

"Her Britannic Majesty, on her part, has appointed as her High Commissioners and Plenipotentiaries, the Right Honourable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, &c.; the Right Honourable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honourable Privy Council, a Member of Parliament, a Companion of the Most Honourable Order of the Bath, &c. &c.; Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; Sir John Alexander Macdonald, Knight Commander of the Most Honourable Order of the Bath, a Member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney-General of Her Majesty's Dominion of Canada; and Montague Bernard, Esq., Chichele Professor of International Law in the University of Oxford;"

"And the President of the United States has appointed, on the part of the United States, as Commissioners in a Joint High Commission and Plenipotentiaries, Hamilton Fish, Secretary of State; Robert Cumming Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts; and George Henry Williams, of Oregon;"

"And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—"

"Art. I.—Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the 'Alabama' claims:"

"And whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express, in a friendly
"spirit, the regret felt by Her Majesty's Government for the escape, "under whatever circumstances, of the 'Alabama' and other vessels "from British ports, and for the depredations committed by those "vessels:

"Now, in order to remove and adjust all complaints and claims "on the part of the United States, and to provide for the speedy "settlement of such claims, which are not admitted by Her Britannic "Majesty's Government, the High Contracting Parties agree that "all the said claims, growing out of acts committed by the aforesaid "vessels, and generically known as the 'Alabama' claims, shall be "referred to a Tribunal of Arbitration, to be composed of five "Arbitrators, to be appointed in the following manner, that is to "say: one shall be named by Her Britannic Majesty; one shall be "named by the President of the United States; His Majesty the "King of Italy shall be requested to name one; the President of "the Swiss Confederation shall be requested to name one; and His "Majesty the Emperor of Brazil shall be requested to name one. "In case of the death, absence, or incapacity to serve of any or "either of the said Arbitrators, or in the event of either of the said "Arbitrators omitting or declining or ceasing to act as such, Her "Britannic Majesty, or the President of the United States, or His "Majesty the King of Italy, or the President of the Swiss Con- "federation, or His Majesty the Emperor of Brazil, as the case may "be, may forthwith name another person to act as Arbitrator in the "place and stead of the Arbitrator originally named by such head "of a State.

"And in the event of the refusal or omission for two months "after receipt of the request from either of the High Contracting "Parties of His Majesty the King of Italy, or the President of the "Swiss Confederation, or His Majesty the Emperor of Brazil, to "name an Arbitrator either to fill the original appointment or in "the place of one who may have died, be absent, or incapacitated, "or who may omit, decline, or from any cause cease to act as such "Arbitrator, His Majesty the King of Sweden and Norway shall be "requested to name one or more persons, as the case may be, to act "as such Arbitrator or Arbitrators.

"Art. II.—The Arbitrators shall meet at Geneva, in Switzer- "land, at the earliest convenient day after they shall have been "named, and shall proceed impartially and carefully to examine "and decide all questions that shall be laid before them on the part "of the Governments of Her Britannic Majesty and the United "States respectively. All questions considered by the Tribunal, "including the final award, shall be decided by a majority of all "the Arbitrators.

"Each of the High Contracting Parties shall also name one "person to attend the tribunal as its agent to represent it generally "in all matters connected with the arbitration.
"Art. III. The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

"Art. IV.—Within four months after the delivery on both sides of the written or printed case, either party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

"The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

"If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

"Art. V.—It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

"Art. VI.—In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

RULES.

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has
APPENDIX II.

"reasonable ground to believe is intended to cruise or to carry on
war against a Power with which it is at peace; and also to use
like diligence to prevent the departure from its jurisdiction of any
vessel intended to cruise or carry on war as above, such vessel
having been specially adapted, in whole or in part, within such
jurisdiction, to warlike use.

"Secondly. Not to permit or suffer either belligerent to make
use of its ports or waters as the base of naval operations against
the other, or for the purpose of the renewal or augmentation of
military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own ports and
waters, and, as to all persons within its jurisdiction, to prevent any
violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded her High Commissioners
and Plenipotentiaries to declare that Her Majesty's Government
cannot assent to the foregoing rules as a statement of principles of
international law which were in force at the time when the claims
mentioned in Article I. arose, but that Her Majesty's Government,
in order to evince its desire of strengthening the friendly relations
between the two countries and of making satisfactory provision
for the future, agrees that, in deciding the questions between the
two countries arising out of those claims, the Arbitrators should
assume that Her Majesty's Government had undertaken to act
upon the principles set forth in these rules.

"And the High Contracting Parties agree to observe these rules
as between themselves in future, and to bring them to the know-
ledge of other maritime Powers and to invite them to accede to
them.

"Art. VII.—The decision of the Tribunal shall, if possible, be
made within three months from the close of the argument on both
sides.

"It shall be made in writing and dated, and shall be signed by
the Arbitrators who may assent to it.

"The said Tribunal shall first determine as to each vessel sepa-
rately whether Great Britain has, by any act or omission, failed
to fulfil any of the duties set forth in the foregoing three rules, or
recognised by the principles of international law not inconsistent
with such rules, and shall certify such fact as to each of the said
vessels. In case the Tribunal find that Great Britain has failed
to fulfil any duty or duties as aforesaid, it may, if it think
proper, proceed to award a sum in gross to be paid by Great
Britain to the United States for all the claims referred to it; and
in such case the gross sum so awarded shall be paid in coin by
the Government of Great Britain to the Government of the
United States at Washington within twelve months after the date
of the award.

"The award shall be in duplicate, one copy whereof shall be de-
divered to the Agent of Great Britain for his Government, and the
APPENDIX II.

"other copy shall be delivered to the Agent of the United States for his Government.

"Art. VIII.—Each Government shall pay its own Agent and provide for the proper remuneration of the Counsel employed by it, and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

"Art. IX.—The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

"Art. X.—In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

"The Board of Assessors shall be constituted as follows: One member thereof shall be named by Her Britannic Majesty, one member thereof shall be named by the President of the United States, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

"As soon as possible after such nominations the Board of Assessors shall be organized in Washington with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and of the United States respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government as Counsel or Agent. A majority of the Assessors in each case shall be sufficient for a decision.

"The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

"Every claim shall be presented to the Assessors within six months from the day of their first meeting; but they may, for
"good cause shown, extend the time for the presentation of any
claim to a further period not exceeding three months.
" The Assessors shall report to each Government, at or before the
expiration of one year from the date of their first meeting, the
amount of claims decided by them up to the date of such report;
if further claims then remain undecided, they shall make a further
report at or before the expiration of two years from the date of
such first meeting; and in case any claims remain undetermined at
that time, they shall make a final report within a further period
of six months.
" The report or reports shall be made in duplicate, and one copy
thereof shall be delivered to the Representative of Her Britannic
Majesty at Washington, and one copy thereof to the Secretary of
State of the United States.
" All sums of money which may be awarded under this Article
shall be payable at Washington, in coin, within twelve months after
the delivery of each report.
" The Board of Assessors may employ such clerks as they shall
think necessary.
" The expenses of the Board of Assessors shall be borne equally
by the two Governments, and paid from time to time, as may be
found expedient, on the production of accounts certified by the
Board. The remuneration of the Assessors shall also be paid by
the two Governments in equal moieties in a similar manner.
" ART. XI.—The High Contracting Parties engage to consider
the result of the proceedings of the Tribunal of Arbitration and of
the Board of Assessors, should such Board be appointed, as a full,
perfect, and final settlement of all the claims hereinbefore referred
to; and further engage that every such claim, whether the same
may or may not have been presented to the notice of, made, pre-
ferred, or laid before the Tribunal or Board, shall, from and after
the conclusion of the proceedings of the Tribunal or Board, be
considered and treated as finally settled, barred, and thenceforth
inadmissible.
" ART. XII.—The High Contracting Parties agree that all claims on
the part of Corporations, Companies, or private individuals, citizens
of the United States, upon the Government of Her Britannic
Majesty, arising out of acts committed against the persons or
property of citizens of the United States during the period between
the 13th of April, 1861, and the 9th of April, 1865, inclusive,
not being claims growing out of the acts of the vessels referred to
in Article I. of this Treaty; and all claims, with the like excep-
tion, on the part of Corporations, Companies, or private indivi-
duals, subjects of Her Britannic Majesty, upon the Government
of the United States, arising out of acts committed against the
persons or property of subjects of Her Britannic Majesty during
the same period, which may have been presented to either
Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV. of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner, that is to say:—One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of Her Britannic Majesty and of the United States respectively; and such declaration shall be entered on the record of their proceedings.

Art. XIII.—The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of, or in answer to, any claim; and to hear, if required, one person on each side, on behalf of each Government, as Counsel or Agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its Agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the
APPENDIX II.

"decision of the Commissioners as absolutely final and conclusive
"upon each claim decided upon by them, and to give full effect to
"such decisions without any objection, evasion, or delay whatso-
"ever.

"Art. XIV.—Every claim shall be presented to the Commis-
"sioners within six months from the day of their first meeting,
"unless in any case where reasons for delay shall be established to
"the satisfaction of the Commissioners; and then, and in any such
"case, the period for presenting the claim may be extended by
"them to any time not exceeding three months longer.

"The Commissioners shall be bound to examine and decide upon
"every claim within two years from the day of their first meeting.
"It shall be competent for the Commissioners to decide in each
"case whether any claim has or has not been duly made, preferred,
"and laid before them, either wholly or to any and what extent,
"according to the true intent and meaning of this Treaty.

"Art. XV.—All sums of money which may be awarded by the
"Commissioners on account of any claim shall be paid by the one
"Government to the other, as the case may be, within twelve
"months after the date of the final award, without interest, and
"without any deduction, save as specified in Article XVI. of this
"Treaty.

"Art. XVI.—The Commissioners shall keep an accurate record,
"and correct minutes or notes of all their proceedings, with the
"dates thereof, and may appoint and employ a Secretary, and any
"other necessary officer or officers, to assist them in the transaction
"of the business which may come before them.

"Each Government shall pay its own Commissioner and Agent
"or Counsel. All other expenses shall be defrayed by the two
"Governments in equal moieties.

"The whole expenses of the Commission, including contingent
"expenses, shall be defrayed by a rateable deduction on the amount
"of the sums awarded by the Commissioners; provided always that
"such deduction shall not exceed the rate of 5 per cent. on the
"sums so awarded.

"Art. XVII.—The High Contracting Parties engage to consider
"the result of the proceedings of this Commission as a full, perfect,
"and final settlement of all such claims as are mentioned in Article
"XII. of this Treaty upon either Government; and further engage
"that every such claim, whether or not the same may have been
"presented to the notice of, made, preferred, or laid before the said
"Commission, shall, from and after the conclusion of the proceedings
"of the said Commission, be considered and treated as finally settled,
"barred, and thenceforth inadmissible.

"Art. XVIII.—It is agreed by the High Contracting Parties
"that, in addition to the liberty secured to the United States'
"fishermen by the Convention between Great Britain and the
"United States, signed at London on the 20th day of October, 1818, "
"of taking, curing, and drying fish on certain coasts of the British "
"North American Colonies therein defined, the inhabitants of the "
"United States shall have, in common with the subjects of Her "
"Britannic Majesty, the liberty, for the term of years mentioned in "
"Article XXXIII. of this Treaty, to take fish of every kind, except "
"shell-fish, on the sea-coasts and shores, and in the bays, harbours, "
"and creeks, of the Provinces of Quebec, Nova Scotia, and New "
"Brunswick, and the Colony of Prince Edward's Island, and of the "
"several islands thereunto adjacent, without being restricted to any "
"distance from the shore, with permission to land upon the said "
"coasts and shores and islands, and also upon the Magdalen Islands, "
"for the purpose of drying their nets and curing their fish; provided "
"that, in so doing, they do not interfere with the rights of private "
"property, or with British fishermen, in the peaceable use of any "
"part of the said coasts in their occupancy for the same purpose. "
"It is understood that the above-mentioned liberty applies solely "
"to the sea fishery, and that the salmon and shad fisheries, and all "
"other fisheries in rivers and the mouths of rivers, are hereby "
"reserved exclusively for British fishermen.

"Art. XIX.—It is agreed by the High Contracting Parties that "
"British subjects shall have, in common with the citizens of the "
"United States, the liberty, for the term of years mentioned in "
"Article XXXIII. of this Treaty, to take fish of every kind, except "
"shell-fish, on the eastern sea-coasts and shores of the United States "
"north of the thirty-ninth parallel of north latitude, and on the "
"shores of the several islands thereunto adjacent, and in the bays, "
"harbours, and creeks of the said sea-coasts and shores of the "
"United States and of the said islands, without being restricted to "
"any distance from the shore, with permission to land upon the said "
"coasts of the United States and of the islands aforesaid, for the "
"purpose of drying their nets and curing their fish; provided that, "
"in so doing, they do not interfere with the rights of private pro- "
"perty, or with the fishermen of the United States, in the peaceable "
"use of any part of the said coasts in their occupancy for the same "
"purpose.

"It is understood that the above-mentioned liberty applies solely "
"to the sea fishery, and that salmon and shad fisheries, and all other "
"fisheries in rivers and mouths of rivers are hereby reserved exclu- "
"sively for fishermen of the United States.

"Art. XX.—It is agreed that the places designated by the Com- "
"missioners appointed under the first Article of the Treaty between "
"Great Britain and the United States, concluded at Washington on "
"the 5th of June, 1854, upon the coasts of the United States and "
"Her Britannic Majesty's dominions, as places reserved from the "
"common right of fishing under that Treaty, shall be regarded as in "
"like manner reserved from the common right of fishing under the
"preceding Articles. In case any question should arise between the
Governments of Her Britannic Majesty and of the United States as
to the common right of fishing in places not thus designated as
reserved, it is agreed that a Commission shall be appointed to
designate such places, and shall be constituted in the same manner,
and have the same powers, duties, and authority as the Commission
appointed under the said first Article of the Treaty of the 5th of

June, 1854.

"Art. XXI.—It is agreed that, for the term of years mentioned
in Article XXXIII. of this Treaty, fish oil and fish of all kinds
(except fish of the inland lakes, and of the rivers falling into them,
and except fish preserved in oil) being the produce of the fisheries
of the United States, or of the Dominion of Canada, or of Prince
Edward's Island, shall be admitted into each country, respectively,
free of duty.

"Art. XXII.—Inasmuch as it is asserted by the Government of
Her Britannic Majesty that the privileges accorded to the citizens
of the United States under Article XVIII. of this Treaty are of
greater value than those accorded by Articles XIX. and XXI. of
this Treaty to the subjects of Her Britannic Majesty, and this
assertion is not admitted by the Government of the United States;
it is further agreed that Commissioners shall be appointed to deter-
mine, having regard to the privileges accorded by the United
States to the subjects of Her Britannic Majesty, as stated in
Articles XIX. and XXI. of this Treaty, the amount of any compensa-
tion which, in their opinion, ought to be paid by the Government
of the United States to the Government of Her Britannic Majesty
in return for the privileges accorded to the citizens of the United
States under Article XVIII. of this Treaty; and that any sum of
money which the said Commissioners may so award shall be paid
by the United States Government, in a gross sum, within twelve
months after such award shall have been given.

"Art. XXIII.—The Commissioners referred to in the preceding
Article shall be appointed in the following manner, that is to say:
One Commissioner shall be named by Her Britannic Majesty, one
by the President of the United States, and a third by Her Britannic
Majesty and the President of the United States conjointly; and in
case the third Commissioner shall not have been so named within
a period of three months from the date when this Article shall take
effect, then the third Commissioner shall be named by the Repre-
sentative at London of His Majesty the Emperor of Austria and
King of Hungary. In case of the death, absence, or incapacity of
any Commissioner, or in the event of any Commissioner omitting
or ceasing to act, the vacancy shall be filled in the manner herein-
before provided for making the original appointment, the period of
three months in case of such substitution being calculated from the
date of the happening of the vacancy.

VOL. II.  M M
The Commissioners so named shall meet in the city of Halifax, in the province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

Art. XXIV.—The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII. and XXIII. of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII. of this Treaty.

Art. XXV.—The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

Art. XXVI.—The navigation of the River St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall for ever remain free and open for the purposes of commerce to the citizens of the United
States, subject to any laws and regulations of Great Britain, or of
the Dominion of Canada, not inconsistent with such privilege of
free navigation.

The navigation of the Rivers Yukon, Porcupine, and Stikine,
ascending and descending from, to, and into the sea, shall for ever
remain free and open for the purposes of commerce to the subjects
of Her Britannic Majesty and to the citizens of the United
States, subject to any laws and regulations of either country within
its own territory, not inconsistent with such privilege of free
navigation.

Arr. XXVII.—The Government of Her Britannic Majesty
engages to urge upon the Government of the Dominion of Canada
to secure to the citizens of the United States the use of the
Welland, St. Lawrence, and other canals in the Dominion on
terms of equality with the inhabitants of the Dominion; and the
Government of the United States engages that the subjects of Her
Britannic Majesty shall enjoy the use of the St. Clair Flats Canal
on terms of equality with the inhabitants of the United States,
and further engages to urge upon the State Governments to secure
to the subjects of Her Britannic Majesty the use of the several
State canals connected with the navigation of the lakes or rivers
traversed by or contiguous to the boundary line between the
possessions of the High Contracting Parties, on terms of equality
with the inhabitants of the United States.

Arr. XXVIII.—The navigation of Lake Michigan shall also,
for the term of years mentioned in Article XXXIII. of this Treaty,
be free and open for the purposes of commerce to the subjects of
Her Britannic Majesty, subject to any laws and regulations of
the United States or of the States bordering thereon not incon-
sistent with such privilege of free navigation.

Arr. XXIX.—It is agreed that, for the term of years mentioned
in Article XXXIII. of this Treaty, goods, wares, or merchandize
arriving at the ports of New York, Boston, and Portland, and any
other ports in the United States which have been or may from
time to time be specially designated by the President of the
United States, and destined for Her Britannic Majesty's Posses-
sions in North America, may be entered at the proper Custom-house
and conveyed in transit, without the payment of duties, through
the territory of the United States, under such rules, regulations,
and conditions for the protection of the revenue as the Government
of the United States may from time to time prescribe; and, under
like rules, regulations, and conditions, goods, wares, or merchan-
dize may be conveyed in transit, without the payment of duties,
from such possessions through the territory of the United States
for export from the said ports of the United States.

It is further agreed that for the like period goods, wares, or
merchandize arriving at any of the ports of Her Britannic
APPENDIX II.

"Majesty's Possessions in North America and destined for the "United States may be entered at the proper Custom-house and "conveyed in transit without the payment of duties, through the "said Possessions, under such rules and regulations, and conditions "for the protection of the revenue, as the Governments of the said "Possessions may from time to time prescribe; and under like "rules, regulations, and conditions, goods, wares, or merchandize "may be conveyed in transit, without payment or duties, from "the United States through the said Possessions to other places "in the United States, or for export from ports in the said "Possessions.

"Art. XXX.—It is agreed that, for the term of years mentioned "in Article XXXIII. of this Treaty, subjects of Her Britannic "Majesty may carry in British vessels, without payment of duty, "goods, wares, or merchandize from one port or place within the "territory of the United States upon the St. Lawrence, the Great "Lakes, and the rivers connecting the same, to another port or "place within the territory of the United States as aforesaid:

"Provided, That a portion of such transportation is made through "the Dominion of Canada by land carriage and in bond, under "such rules and regulations as may be agreed upon between the "Government of Her Britannic Majesty and the Government of the "United States.

"Citizens of the United States may for the like period carry in "United States' vessels, without payment of duty, goods, wares, or "merchandize from one port or place within the Possessions of Her "Britannic Majesty in North America, to another port or place "within the said Possessions: Provided, That a portion of such "transportation is made through the territory of the United States "by land carriage and in bond, under such rules and regulations as "may be agreed upon between the Government of the United "States and the Government of Her Britannic Majesty.

"The Government of the United States further engages not to "impose any export duties on goods, wares, or merchandize carried "under this Article through the territory of the United States; and "Her Majesty's Government engages to urge the Parliament of the "Dominion of Canada and the Legislatures of the other Colonies "not to impose any export duties on goods, wares, or merchandize "carried under this Article; and the Government of the United "States may, in case such export duties are imposed by the "Dominion of Canada, suspend, during the period that such duties "are imposed, the right of carrying granted under this Article in "favour of the subjects of Her Britannic Majesty.

"The Government of the United States may suspend the right "of carrying granted in favour of the subjects of Her Britannic "Majesty under this Article in case the Dominion of Canada should "at any time deprive the citizens of the United States of the use of
APPENDIX II.

"the canals in the said Dominion on terms of equality with the
"inhabitants of the Dominion, as provided in Article XXVII.
"Art. XXXI.—The Government of Her Britannic Majesty
"further engages to urge upon the Parliament of the Dominion of
"Canada and the Legislature of New Brunswick, that no export
duty, or other duty, shall be levied on lumber or timber of any
"kind cut on that portion of the American territory in the State of
"Maine watered by the River St. John and its tributaries, and
"floats down that river to the sea, when the same is shipped to the
"United States from the province of New Brunswick. And, in
case any such export or other duty continues to be levied after
"the expiration of ten years from the date of the exchange of the
"ratifications of this Treaty, it is agreed that the Government of
"the United States may suspend the right of carrying hereinbefore
"granted under Article XXX. of this Treaty for such period as
"such export or other duty may be levied.

"Art. XXXII.—It is further agreed that the provisions and
"stipulations of Articles XVIII. to XXV. of this Treaty, inclusive,
"shall extend to the Colony of Newfoundland, so far as they are
"applicable. But if the Imperial Parliament, the Legislature of
"Newfoundland, or the Congress of the United States, shall not
"embrace the Colony of Newfoundland in their laws enacted for
"carrying the foregoing Articles into effect, then this Article shall
"be of no effect; but the omission to make provision by law to
give it effect, by either of the Legislative Bodies aforesaid, shall
"not in any way impair any other Articles of this Treaty.

"Art. XXXIII.—The foregoing Articles XVIII. to XXV. in-
cclusive, and Article XXX. of this Treaty, shall take effect as soon
"as the laws required to carry them into operation shall have been
"passed by the Imperial Parliament of Great Britain, by the Par-
"liament of Canada, and by the Legislature of Prince Edward's
"Island on the one hand, and by the Congress of the United
"States on the other. Such assent having been given, the said
"Articles shall remain in force for the period of ten years from the
date at which they may come into operation, and further, until
"the expiration of two years after either of the High Contracting
"Parties shall have given notice to the other of its wish to termi-
nate the same; each of the High Contracting Parties being at
"liberty to give such notice to the other at the end of the said
"period of ten years or at any time afterward.

"Art. XXXIV.—Whereas it was stipulated by Article I. of the
"Treaty concluded at Washington on the 15th of June, 1846,
"between Her Britannic Majesty and the United States, that the
"line of boundary between the territories of the United States and
"those of Her Britannic Majesty, from the point on the forty-ninth
"parallel of north latitude up to which it had already been ascer-
tained, should be continued westward along the said parallel of
"north latitude ' to the middle of the channel which separates the "' continent from Vancouver's Island, and thence southerly, "through the middle of the said channel and of Fuca Straits, to "the Pacific Ocean;" and whereas the Commissioners appointed "by the two High Contracting Parties to determine that portion of "the boundary which runs southerly through the middle of the "channel aforesaid were unable to agree upon the same; and "whereas the Government of Her Britannic Majesty claims that "such boundary line should, under the terms of the Treaty above "recited, be run through the Rosario Straits, and the Government "of the United States claims that it should be run through the "Canal de Haro, it is agreed that the respective claims of the "Government of Her Britannic Majesty and of the Government of "the United States shall be submitted to the arbitration and award "of His Majesty the Emperor of Germany, who, having regard to "the above-mentioned Article of the said Treaty, shall decide "thereupon, finally and without appeal, which of those claims is "most in accordance with the true interpretation of the Treaty of "June 15, 1846.

"Art. XXXV.—The award of His Majesty the Emperor of "Germany shall be considered as absolutely final and conclusive; "and full effect shall be given to such award without any objection, "evasion, or delay whatsoever. Such decision shall be given in "writing and dated; it shall be in whatsoever form His Majesty may "choose to adopt; it shall be delivered to the Representatives or "other public Agents of Great Britain and of the United States "respectively who may be actually in Berlin, and shall be considered "as operative from the day of the date of the delivery thereof. "Art. XXXVI.—The written or printed case of each of the two "Parties, accompanied by the evidence offered in support of the "same, shall be laid before his Majesty the Emperor of Germany, "within six months from the date of the exchange of the ratifications "of this Treaty, and a copy of such case and evidence shall be com- "municated by each Party to the other, through their respective "Representatives at Berlin.

"The High Contracting Parties may include in the evidence to "be considered by the Arbitrator, such documents, official cor- "respondence, and other official or public statements bearing on the "subject of the reference as they may consider necessary to the "support of their respective cases.

"After the written or printed case shall have been communicated "by each Party to the other, each Party shall have the power of "drawing up and laying before the Arbitrator a second and defini- "tive statement, if it think fit to do so, in reply to the case of the "other Party so communicated, which definitive statement shall be "so laid before the Arbitrator, and also be mutually communicated "in the same manner as aforesaid, by each party to the other, within
"six months from the date of laying the first statement of the case before the Arbitrator.

"Art. XXXVII.—If, in the case submitted to the Arbitrator, either Party shall specify or allude to any report or document in its own exclusive possessions without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one counsel or agent for each Party, in relation to any matter, and at such time, and in such manner, as he may think fit.

"Art. XXXVIII.—The Representatives or other public Agents of Great Britain and of the United States at Berlin respectively, shall be considered as the Agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications, and give all his notices, to such Representatives or other public Agents, who shall represent their respective Governments generally in all matters connected with the arbitration.

"Art. XXXIX.—It shall be competent to the Arbitrator to proceed in the said arbitration, and all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both Agents, and either orally or by written discussion, or otherwise.

"Art. XL.—The Arbitrator may, if he think fit, appoint a Secretary or Clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This, and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

"Art. XLI.—The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

"Art. XLII.—The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

"Art. XLIII.—The present Treaty shall be duly ratified by Her Britannic Majesty, and by the President of the United States of America, by and with the advice and consent of the Senate.
thereof, and the ratifications shall be exchanged either at London or at Washington within six months from the date hereof, or earlier if possible.

"In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

"Done in duplicate at Washington, the eighth day of May, in the year of Our Lord one thousand eight hundred and seventy-one.

"(L.S.) DE GREY AND RIPON.  
"(L.S.) STAFFORD H. NORTHCOTE.  
"(L.S.) EDWD. THORNTON.  
"(L.S.) JOHN A. MACDONALD.  
"(L.S.) MONTAGUE BERNARD.  
"(L.S.) HAMILTON FISH.  
"(L.S.) ROBT. C. SCHENCK.  
"(L.S.) SAMUEL NELSON.  
"(L.S.) EBENEZER ROCKWOOD HOAR.  
"(L.S.) GEO. H. WILLIAMS.

APPENDIX III. PAGE 16. CHAP. 4.

RECOGNITION.

COMMUNICATIONS WITH FRANCE AND SPAIN, RELATING TO THE SPANISH AMERICAN PROVINCES (a).

(Extract of a Memorandum of a Conference between the Prince de Polignac and Mr. Canning, held Oct. 9, 1823. (b)

The Prince de Polignac having announced to Mr. Canning that His Excellency was now prepared to enter with Mr. Canning into a frank explanation of the views of his Government respecting the question of Spanish America, in return for a similar communication which Mr. Canning had previously offered to make to the Prince de Polignac on the part of the British Cabinet, Mr. Canning stated:—

"That the British Cabinet had no disguise or reservation on that subject; that their opinions and intentions were substantially the same as were announced to the French Government by the despatch of Mr. Canning to Sir Charles Stuart, of the 31st of March, which despatch that ambassador communicated to M. de Chateaubriand, and which had since been published to the world.

(a) Presented to both Houses of Parliament, by command of His Majesty, 4th March, 1824.

APPENDIX III.

"That the near approach of a crisis, in which the affairs of Spain may naturally occupy a great share of the attention of both Powers, made it desirable that there should be no misunderstanding between them on any part of a subject so important.

"That the British Government were of opinion, that any attempt to bring Spanish America again under its ancient submission to Spain must be utterly hopeless, that all negotiation for that purpose would be unsuccessful, and that the prolongation or renewal of war for the same object would be only a waste of human life, and an infliction of calamity on both parties, to no end.

"That the British Government would, however, not only abstain from interposing any obstacle, on their part, to any attempt at negotiation which Spain might think proper to make, but would aid and countenance such negotiation, provided it were founded upon a basis which appeared to them to be practicable; and that they would, in any case, remain strictly neutral in a war between Spain and the Colonies, if war should be unhappily prolonged.

"But that the junction of any Foreign Power, in an enterprise of Spain against the Colonies, would be viewed by them as constituting an entirely new question, and one upon which they must take such decision as the interests of Great Britain might require.

"That the British Government absolutely disclaimed, not only any desire of appropriating to itself any portion of the Spanish Colonies, but any intention of forming any political connection with them, beyond that of amity and commercial intercourse.

"That in those respects, so far from seeking an exclusive preference for British subjects over those of foreign States, England was prepared, and would be contented, to see the mother country (by virtue of an amicable arrangement) in possession of that preference, and to be ranked, after her, equally with others, on the footing of the most favoured nation.

"That, completely convinced that the ancient system of the Colonies could not be restored, the British Government could not enter into any stipulation binding itself either to refuse or to delay its recognition of their independence.

"That the British Government had no desire to precipitate that recognition so long as there was any reasonable chance of an accommodation with the mother country, by which such recognition might come first from Spain.

"But that it could not wait indefinitely for that result; that it could not consent to make its recognition of the New States dependent upon that of Spain; and that it would consider any foreign interference, by force or by menace, in the dispute between Spain and the Colonies, as a motive for recognizing the latter without delay.
APPENDIX III.

"That the Mission of Consuls to the several provinces of Spanish America was no new measure on the part of this country,—that it was one which had, on the contrary, been delayed, perhaps too long, in consideration of the state of Spain, after having been announced to the Spanish Government, in the month of December last, as settled, and even after a list had been furnished to that Government of the places to which such appointments were intended to be made.

"That such appointments were absolutely necessary for the protection of British trade in those countries.

"That the old pretension of Spain to interdict all trade with those countries, was, in the opinion of the British Government, altogether obsolete; but that, even if attempted to be enforced against others, it was, with regard to Great Britain, clearly inapplicable.

"That permission to trade with the Spanish Colonies had been conceded to Great Britain in the year 1810, when the mediation of Great Britain between Spain and her Colonies was asked by Spain and granted by Great Britain; that this mediation, indeed, was not afterwards employed, because Spain changed her counsel, but that it was not, therefore, practicable for Great Britain to withdraw commercial capital once embarked in Spanish America, and to desist from commercial intercourse once established.

"That it had been ever since distinctly understood that the trade was open to British subjects, and that the ancient coast laws of Spain were, so far as regarded them at least, tacitly repealed.

"That, in virtue of this understanding, redress had been demanded of Spain in 1822, for (among other grievances) seizures of vessels for alleged infringements of those laws; which redress the Spanish Government bound itself by a Convention (now in course of execution) to afford.

"That Great Britain, however, had no desire to set up any separate right to the free enjoyment of this trade; that she considered the force of circumstances, and the irreversible progress of events, to have already determined the question of the existence of that freedom for all the world; but that, for herself, she claimed, and would continue to use it; and should any attempt be made to dispute that claim, and to renew the obsolete interdiction, such attempt might be best cut short by a speedy and unqualified recognition of the independence of the Spanish American States.

"That, with these general opinions, and with these peculiar claims, England could not go into a joint deliberation upon the subject of Spanish America upon an equal footing with other Powers, whose opinions were less formed upon that question, and whose interests were less implicated in the decision of it.

"That she thought it fair, therefore, to explain beforehand, to what degree her mind was made up, and her determination taken."

The Prince de Polignac declared—
"That his Government believed it to be utterly hopeless to reduce Spanish America to the state of its former relation to Spain.

"That France disclaimed, on her part, any intention or desire to avail herself of the present state of the Colonies, or of the present situation of France towards Spain, to appropriate to herself any part of the Spanish possessions in America, or to obtain for herself any exclusive advantages.

"And that, like England, she would willingly see the mother country in possession of superior commercial advantages, by amicable arrangements; and would be contented, like her, to rank, after the mother country, among the most favoured nations.

"Lastly, that she abjured, in any case, any design of acting against the Colonies by force of arms."

The Prince de Polignac proceeded to say—

"That, as to what might be the best arrangement between Spain and her Colonies, the French Government could not give, nor venture to form, an opinion, until the King of Spain should be at liberty.

"That they would then be ready to enter upon it, in concert with their allies, and with Great Britain among the number."

In observing upon what Mr. Canning had said, with respect to the peculiar situation of Great Britain, in reference to such a Conference, the Prince de Polignac declared—

"That he saw no difficulty which should prevent England from taking part in the Conference, however she might now announce the difference in the view which she took of the question from that taken by the allies. The refusal of England to co-operate in the work of reconciliation might afford reason to think, either that she did not really wish for that reconciliation, or that she had some ulterior object in contemplation—two suppositions equally injurious to the honour and good faith of the British Cabinet."

The Prince de Polignac further declared—

"That he could not conceive what could be meant, under the present circumstances, by a pure and simple acknowledgment of the independence of the Spanish Colonies; since, those countries being actually distracted by civil wars, there existed no government in them which could offer any appearance of solidity; and that the acknowledgment of American Independence, as long as such a state of things continued, appeared to him to be nothing less than a real sanction of anarchy."

The Prince de Polignac added—

"That, in the interest of humanity, and especially in that of the Spanish Colonies, it would be worthy of the European Governments to concert together the means of calming, in those distant and scarcely civilised regions, passions blinded by party spirit; and to endeavour to bring back to a principle of union in govern-
ment, whether monarchical or aristocratical, people among whom absurd and dangerous theories were now keeping up agitation and disunion."

Mr. Canning, without entering into discussion upon these abstract principles, contented himself with saying—

"That, however desirable the establishment of a monarchical form of government in any of those provinces might be, on the one hand, or whatever might be the difficulties in the way of it, on the other hand, his Government could not take upon itself to put forward as a condition of their recognition."

No. 2.

Mr. Canning to Sir W. à Court (c).

Foreign Office, January 30, 1824.

"Sir,—The Messenger Latchford delivered to me, on the 14th instant, your despatch, inclosing a copy of the Count de Ofalia's official Note to you of the 26th of December last, with the accompanying copy of an instruction, which has been addressed, by order of His Catholic Majesty, to his ambassador at Paris, and to his ministers plenipotentiary at the Courts of Vienna and St. Petersburg.

"Having laid these papers before the King, I have received His Majesty's commands to direct you to return to them the following answer:—

"The purpose of the Spanish instruction is to invite the several Powers, the allies of His Catholic Majesty, to 'establish a Conference at Paris, in order that their plenipotentiaries, together with those of His Catholic Majesty, may aid Spain in adjusting the affairs of the revolted countries of America.'

"The maintenance of the 'Sovereignty' of Spain over her late colonies is pointed out in this instruction as one specific object of the proposed Conference; and though an expectation of the employment of force for this object, by the Powers invited to the Conference, is not plainly indicated, it is not distinctly disclaimed.

"The invitation contained in this instruction not being addressed directly to the Government of Great Britain, it may not be necessary to observe upon that part of it which refers to the late events in the Peninsula,' as having 'paved the way' for the desired co-operation.'

"The British Government could not acknowledge an appeal founded upon transactions to which it was no party. But no such appeal was necessary. No variation in the internal affairs of Spain has, at any time, varied the King's desire to see a termination to the evils arising from the protracted struggle between Spain and Spanish America, or His Majesty's disposition to concur in bringing about that termination.

"From the year 1810, when His Majesty's single mediation was asked and granted to Spain, to effect a reconciliation with her Colonies,—the disturbances in which Colonies had then but newly broken out,—to the year 1818, when the same task, increased in difficulty by the course and complication of events in America, was proposed to be undertaken by the Allied Powers assembled in Conference at Aix-la-Chapelle,—and from the year 1818 to the present time,—the good offices of His Majesty for this purpose have always been at the service of Spain, within limitations and upon conditions, which have been in each instance explicitly described.

"Those limitations have uniformly excluded the employment of force or of menace against the Colonies on the part of any mediating Power; and those conditions have uniformly required the previous statement by Spain of some definite and intelligible proposition,—and the discontinuance on her part of a system utterly inapplicable to the new relations which had grown up between the American Provinces and other countries.

"The fruitless issue of the Conferences at Aix-la-Chapelle would have deterred the British Government from acceding to a proposal for again entertaining, in Conference, the question of a mediation between Spain and the American Provinces, even if other circumstances had remained nearly the same. But the events which have followed each other with such rapidity during the last five years, have created so essential a difference, as well in the relative situation in which Spain and the American Provinces stood, and now stand to each other, as in the external relations and the internal circumstances of the Provinces themselves, that it would be vain to hope that any mediation, not founded on the basis of independence, could now be successful.

"The best proof which the British Government can give of the interest which it continues to feel for Spain, is, to state frankly their opinion as to the course most advisable to be pursued by His Catholic Majesty; and to answer, with the like frankness, the question implied in M. Ofalia's instruction, as to the nature and extent of their own relations with Spanish America.

"There is no hesitation in answering this question. The subjects of His Majesty have for many years carried on trade and formed commercial connections in all the American Provinces which have declared their separation from Spain.
"This trade was originally opened with the consent of the Spanish Government. It has grown gradually to such an extent as to require some direct protection, by the establishment at several ports and places in those Provinces of Consuls on the part of this country—a measure long deferred out of delicacy to Spain, and not resorted to at last without distinct and timely notification to the Spanish Government.

"As to any further step to be taken by His Majesty towards the acknowledgment of the de facto Governments of America, the decision must (as has already been stated more than once to Spain and to other Powers) depend upon various circumstances, and, among others, upon the reports which the British Government may receive of the actual state of affairs in the several American Provinces.

"But it appears manifest to the British Government, that if so large a portion of the globe should remain much longer without any recognised political existence, or any definite political connection with the established Governments of Europe, the consequences of such a state of things must be at once most alarming to those Governments, and most injurious to the interests of all European nations.

"For these reasons, and not from mere views of selfish policy, the British Government is decidedly of opinion that the recognition of such of the new States as have established de facto their separate political existence cannot be much longer delayed.

"The British Government have no desire to anticipate Spain in that recognition. On the contrary, it is on every account their wish that His Catholic Majesty should have the grace and the advantage of leading the way, in that recognition, among the Powers of Europe. But the Court of Madrid must be aware that the discretion of His Majesty in this respect cannot be indefinitely bound up by that of His Catholic Majesty; and that even before many months elapse, the desire now sincerely felt by the British Government, to leave this precendency to Spain, may be overborne by considerations of a more comprehensive nature—considerations regarding not only the essential interests of His Majesty's subjects, but the relations of the old world with the new.

"Should Spain resolve to avail herself of the opportunity yet within her power, the British Government would, if the Court of Madrid desired it, willingly afford its countenance and aid to a negotiation, commenced on that only basis which appears to them to be now practicable; and would see, without reluctance, the conclusion, through a negotiation on that basis, of an arrangement by which the mother country should be secured in the enjoyment of commercial advantages superior to those conceded to other nations.
“For herself, Great Britain asks no exclusive privileges of trade, no invidious preference, but equal freedom of commerce for all.

If Spain shall determine to persevere in other counsels, it cannot but be expected that Great Britain must take her own course upon this matter, when the time for taking it shall arrive, of which Spain shall have full and early intimation.

Nothing that is here stated can occasion to the Spanish Government any surprise.

In my despatch to Sir Charles Stuart of the 31st of March, 1823, which was communicated to the Spanish Government, the opinion was distinctly expressed, that time and the course of events had substantially decided the separation of the Colonies from the mother country, although the formal recognition of those Provinces as Independent States, by His Majesty, might be hastened or retarded by various external circumstances, as well as by the more or less satisfactory progress in each State, towards a regular and settled form of Government.

At a subsequent period, in a communication (d) made, in the first instance, to France, and afterwards to other Powers (e), as well as to Spain, the same opinions were repeated, with this specific addition—that in either of two cases (now happily not likely to occur)—in that of any attempt on the part of Spain to revive the obsolete interdiction of intercourse with countries over which she has no longer any actual dominion, or in that of the employment of foreign assistance to re-establish her dominion in those countries, by force of arms, the recognition of such new States by His Majesty would be decided and immediate.

After thus declaring to you, for the information of the Court of Madrid, the deliberate opinion of the British Government on the points on which Spain requires the advice of her allies, it does not appear to the British Cabinet at all necessary to go into a Conference to declare that opinion anew; even if it were perfectly clear, from the tenour of M. Ofalia’s instruction, that Great Britain is in fact included in the invitation to the Conference at Paris.

Every one of the Powers so invited has been constantly and unreservedly apprised, not only of each step which the British Government has taken, but of every opinion which it has formed on this subject: and this despatch will be communicated to them all.

If those Powers should severally come to the same conclusion with Great Britain, the concurrent expression of their several

(d) The Memorandum of Conference, No. 1.
(e) Austria, Russia, Prussia, Portugal, the Netherlands, and the United States of America.
APPENDIX III.

"opinions cannot have less weight in the judgment of Spain, and "must naturally be more acceptable to her feelings, than if such "concurrence, being the result of a Conference of Five Powers, "should carry the appearance of a concerted dictation.
"If (unhappily, as we think) the allies, or any of them, should "come to a different conclusion, we shall at least have avoided the "inconvenience of a discussion, by which our own opinion could "not have been changed; we shall have avoided an appearance of "mystery, by which the jealousy of other parties might have been "excited; we shall have avoided a delay, which the state of the "question may hardly allow.

"Meanwhile, this explicit recapitulation of the whole course of "our sentiments and of our proceedings on this momentous sub-
ject, must at once acquit us of any indisposition to answer the "call of Spain for friendly counsel, and protect us against the "suspicion of having any purpose to conceal from Spain or from "the world.

"I am, &c.,

"GEORGE CANNING.

"The Right Hon. Sir W. à Court, G.C.B., &c. &c. &c."

Note of Mr. Secretary Canning to the Chevalier de Los Rios, relative to Spanish America (f).

"Foreign Office, March 25, 1825.

"The undersigned, His Majesty's Principal Secretary of State for "Foreign Affairs, is commanded by his Sovereign to deliver to the "Chevalier de Los Rios, for the purpose of being transmitted to "his Court, the following reply to the official Note, addressed by "His Excellency M. Zea to his Majesty's Chargé d'Affaires at "Madrid, on the 21st of January.

"So large a portion of the official Note of M. Zea was founded "upon a denial of the facts which had been reported to the British "Government, with respect to the state of several of the countries "of Spanish America, and upon an anticipation of events expected "by the Court of Spain to take place in those countries, by which "the credibility of the reports transmitted to the British Govern-
ment would be effectually disproved, that it has been thought "advisable to await the issue of the expected events in Spanish "America, rather than to confront evidence with evidence, and to "discuss probabilities and conjectures.

"Of that issue, decisive as it appears to be, the undersigned is "directed to say no more than that it is a great satisfaction to the

"British Government that it had actually taken place before the
intentions of the British Government towards the other countries
of Spanish America were announced. Those intentions, there-
fore, cannot by possibility have had the slightest influence upon
the result of the war in Peru.
"With this single observation, the undersigned is directed to
pass over all that part of M. Zea's Note which turns upon the
supposed incorrectness of the information on which the decision
of the British Government was founded.
"The questions which remain to be examined are, whether, in
treating with de facto Governments, now established beyond the
danger of any external assailement, Great Britain has violated
either any general principle of International Law, or any positive
obligation of Treaty.
"To begin with the latter, as the more specific accusation.
"M. Zea brings forward, repeatedly, the general charge of vio-
lated Treaties; but as he specifies only two—that of 1809 and
that of 1814, it may be presumed that he relies on them alone
to substantiate this charge.
"First, as to the Treaty of 1809:—
"That Treaty was made at the beginning of the Spanish struggle
against France, and was directed wholly, and in terms not to be
misapprehended, to the circumstances of the moment at which it
was made. It was a Treaty of Peace, putting an end to the war,
in which we had been, since 1804, engaged with Spain. It is
expressly described in the first Article as a Treaty of 'Alli-
ance during the War,' in which we were engaged, jointly with
Spain against France. All the stipulations of the Treaty had
evident reference to the declared determination of the then
Ruler of France, to uphold a branch of his own family upon the
Throne of Spain and of the Indies; and they undoubtedly pledged
us to Spain not to lay down our arms until that design should be
defeated in Spain, and the pretension altogether abandoned as to
America—a pledge which it is not, and cannot be denied, that
Great Britain amply redeemed. But those objects once accom-
plished, the stipulations of the Treaty were fulfilled, and its obli-
gations necessarily expired, together with the matter to which
they related.
"In effect, at the happy conclusion of the war in the Peninsula,
and after the restoration, by British assistance, of His Catholic
Majesty to the throne of his ancestors, the Treaty of 1809 was
replaced by the Treaty of 1814. And what does that Treaty
contain?—First, the expression of an earnest wish on the part
of His Majesty that Spanish America may be re-united to the
Spanish Monarchy; and, secondly, an engagement to prohibit
British subjects from supplying the Spanish Americans with
munitions of war. This engagement was instantly carried into
VOL. II.
effect by an Order in Council of 1814. And in furtherance of the like object, beyond the obligation of the Treaty, an Act of Parliament was passed in 1819, prohibiting the service of British subjects in the ranks of the resisting Colonies.

That the wish expressed in this Treaty was sincere, the proof is to be found, not only in the measures above mentioned, but in the repeated offers of Great Britain to mediate between Spain and her colonies. Nor were these offers of mediation, as M. de Zea alleges, uniformly founded on the single basis of the admission by Spain of the independence of the Spanish provinces.

Years had elapsed, and many opportunities had been missed, of negotiating on better terms for Spain, before that basis was assumed to be the only one on which negotiation could be successfully opened.

It was not assumed in 1812, when our mediation was offered to the Cortes.

It was not assumed in 1815, when Spain asked our mediation, but refused to state the terms to which she was willing to agree.

It was not assumed in 1818, in the Conferences at Aix-la-Chapelle, in which Conferences the question of an arrangement between Spain and her Americas was, for the first and last time, discussed between the Great Powers of Europe.

After the silence, indeed, which Spain observed, as to the opinion of the Powers assisting at those Conferences, when laid before her, two things became perfectly clear; the first, that Spain had, at that time, no serious intention of offering any terms, such as the Spanish American Provinces were likely to accept; the second, that any subsequent reference of the subject to a Congress must be wholly fruitless and unsatisfactory. From that time forth, Great Britain abstained from stirring the subject of negotiation with the Colonies, till, in the month of May, 1822, Spain spontaneously announced to Great Britain that she had measures in contemplation for the pacification of her Americas, on a basis entirely new, which basis, however, was not explicitly described.

In answer to that notification, Spain was exhorted by Great Britain to hasten, as much as possible, her negotiation with the Colonies, as the course of events was evidently so rapid as not to admit of a much longer delay;—but no suggestion was even then brought forward by Great Britain as to the adoption of the basis of independence.

The first suggestion of that basis came, in fact, from the Government of Spain itself, in the month of November, 1822, when the British Minister at Madrid received an intimation that the Cortes meditated opening negotiations with the Colonies, on the basis of Colonial Independence—negotiations which were in fact subsequently opened, and carried to a successful termination, with
“Buenos Ayres, though they were afterwards disavowed by His
"Catholic Majesty.
“"It was not till after this last-mentioned communication from
"the Spanish Government, that Great Britain expressed the opinion
"which she entertained, as to the hopelessness of negotiating upon
"any other basis than that then first suggested by the Spanish
"Government.
"This opinion, stated (as has been said), in the first instance, 
"confidentially to Spain, was, nearly a twelvemonth afterwards,
"that is to say, in the month of October, 1823, mentioned by the
"undersigned, in a Conference with the French Ambassador in
"London, the substance of which Conference was communicated
"to Spain, and to other Powers. It was repeated and enforced in
"the despatch from the undersigned to Sir William à Court, in
"January, 1824.
"Nothing, therefore, can be less exact than the supposition that
"Great Britain has uniformly put forward the basis of Independence
"as the sine quâ non condition of her counsel and assistance to
"Spain, in negotiation with her Colonies.
"To come now to the Second Charge against Great Britain,—
"the alleged violation of general International Law. Has it ever
"been admitted as an axiom, or ever been observed by any nation
"or Government as a practical maxim, that no circumstances, and
"no time, should entitle a de facto Government to recognition?—
"or should entitle Third Powers, who may have a deep interest in
"defining and establishing their relations with a de facto Govern-
"ment, to do so?
"Such a proceeding on the part of Third Powers, undoubtedly
"does not decide the question of right against the mother country.
"The Netherlands had thrown off the supremacy of Spain long
"before the end of the sixteenth century; but that supremacy was
"not formally renounced by Spain till the Treaty of Westphalia
"in 1648. Portugal declared, in 1640, her independence of the
"Spanish Monarchy; but it was not till 1668 that Spain, by
"Treaty, acknowledged that independence.
"During each of these intervals, the abstract rights of Spain
"may be said to have remained unextinguished. But Third Powers
"did not, in either of these instances, wait the slow conviction of
"Spain, before they thought themselves warranted to establish
"direct relations, and even to contract intimate alliances with the
"Republic of the United Netherlands, as well as with the new
"monarchy of the House of Braganza.
"The separation of the Spanish Colonies from Spain has been
"neither our work nor our wish. Events, in which the British
"Government had no participation, decided that separation,—a
"separation which, we are still of opinion, might have been averted,
"if our counsels had been listened to in time. But out of that

APPENDIX III. 547
"separation grew a state of things, to which it was the duty of the
British Government (in proportion as it became the plain and
legitimate interest of the nation whose welfare is committed to its
charge) to conform its measures, as well as its language, not
hastily and precipitately, but with due deliberation and circum-
spection.

"To continue to call that a possession of Spain, in which all
Spanish occupation and power had been actually extinguished
and effaced, could render no practical service to the mother
country; but it would have risked the peace of the world. For
all political communities are responsible to other political com-
munities for their conduct; that is, they are bound to perform the
ordinary international duties, and to afford redress for any viola-
tion of the rights of others by their citizens and subjects.

"Now, either the mother country must have continued respon-
sible for acts over which it could no longer exercise the shadow
of a control, or the inhabitants of those countries, whose inde-
pendent political existence was, in fact, established, but to whom
the acknowledgment of that independence was denied, must have
been placed in a situation, in which they were either wholly irre-
 sponsible for all their actions, or were to be visited, for such of
those actions as might furnish ground of complaint to other
nations, with the punishment due to pirates and outlaws.

"If the former of these alternatives—the total irresponsibility of
unrecognised States—be too absourd to be maintained; and if the
latter—the treatment of their inhabitants as pirates and outlaws—
be too monstrous to be applied, for an indefinite length of time, to
a large portion of the habitable globe, no other choice remained
for Great Britain, or for any country having intercourse with the
Spanish American Provinces, but to recognise, in due time, their
political existence as States, and thus to bring them within the
pale of those rights and duties which civilized nations are bound
mutually to respect, and are entitled reciprocally to claim from
each other.

"The example of the late Revolution in France, and of the ulti-
mate happy restoration of His Majesty, Louis XVIII., is pleaded
by M. Zea in illustration of the principle of unextinguishable right
in a legitimate Sovereign, and of the respect to which that right
is entitled from all foreign Powers; and he calls upon Great
Britain, in justice to her own consistency, to act with the same
reserve towards the new States of Spanish America, which she
employed, so much to her honour, towards revolutionary France.

"But can M. Zea need to be reminded that every Power in
Europe, and specifically Spain amongst the foremost, not only
acknowledged the several successive Governments, de facto, by
which the House of Bourbon was first expelled from the throne
of France, and afterwards kept for near a quarter of a century
APPENDIX III.

"out of possession of it, but contracted intimate alliances with them
all; and, above all, with that which M. Zea justly describes as the
strongest of de facto Governments—the Government of Bonaparte,
against whom, not any principle of respect for the rights of legiti-
mate monarchy, but his own ungovernable ambition, finally
brought combined Europe into the field?
"There is no use in endeavouring to give a specious colouring to
facts which are now the property of history.
"The undersigned is, therefore, compelled to add that Great
Britain herself cannot justly accept the praise which M. Zea is
willing to ascribe to her in this respect; nor can she claim to be
altogether exempted from the general charge of having treated
with the Powers of the French Revolution.
"It is true, indeed, that up to the year 1796 she abstained from
treating with revolutionary France, long after other Powers of
Europe had set her the example. But the reasons alleged in Par-
liament, and in State Papers, for that abstinence, was the unsettled
state of the French Government. And it cannot be denied that,
both in 1796 and 1797, Great Britain opened a negotiation for
peace with the Directory of France—a negotiation, the favourable
conclusion of which would have implied a recognition of that
form of Government; that in 1801, she made peace with the Con-
sulate; that if, in 1806, she did not conclude a Treaty with
Bonaparte, Emperor of France, the negotiation was broken off
merely on a question of terms; and that if, from 1808 to 1814,
she steadily refused to listen to any overtures from France, she
did so, declaredly and notoriously, on account of Spain alone,
whom Bonaparte pertinaciously refused to admit as party to the
negotiation.
"Nay, further, it cannot be denied that, even in 1814, the year
in which the Bourbon Dynasty was eventually restored, peace
would have been made by Great Britain with Bonaparte, if he
had not been unreasonable in his demands; and Spain cannot be
ignorant that, even after Bonaparte was set aside, there was
question among the allies of the possible expediency of placing
some other than a Bourbon on the throne of France.
"The appeal, therefore, to the conduct of the Powers of Europe,
and even to that of Great Britain herself, with respect to the
French Revolution, does but recall abundant instances of the
recognition of de facto Governments; by Great Britain, perhaps,
later and more reluctantly than by others, but by Great Britain
herself, however reluctantly, after the example set to her by the
other Powers of Europe, and specifically by Spain.
"There are two other points in M. Zea's Note, which appear to
call for particular observation.
"M. Zea declares, that the King of Spain will never recognise
the new States of Spanish America, and that His Majesty will
never cease to employ the force of arms against his rebellious subjects in that part of the world.

We have neither the pretension nor the desire to control His Catholic Majesty's conduct; but this declaration of M. Zea comprises a complete justification of our conduct, in having taken the opportunity which, to us, seemed ripe for placing our relations with the new States of America on a definite footing. For this declaration plainly shows, that the complaint against us is not merely as to the mode or the time of our advances towards those States; it shows that the dispute between us and Spain is not merely as to the question of fact, whether the internal condition of any of those States be such as to justify the entering into definite relations with them; that it was not merely a reasonable delay for the purpose of verifying contradictory reports, and of affording opportunity for friendly negotiation, that was required of us; it shows that no extent of forbearance on our part would have satisfied Spain; and that, defer our advances towards the new States as long as we might, we should still have had to make them without the consent of Spain; for that Spain is determined against all compromise, under any circumstances and at any time, and is resolved upon interminable war with her late Colonies in America.

M. Zea concludes with declaring, that His Catholic Majesty will protest, in the most solemn manner, against the measures announced by the British Government, as violating existing Treaties, and the inprescriptible rights of the throne of Spain.

Against what will Spain protest?

It has been proved that no Treaties are violated by us; and we admit that no question of right is decided, by our recognition of the new States of America.

But, if the argument upon which this declaration is founded be true, it is eternal; and the offence of which we are guilty, in placing our intercourse with those countries under the protection of Treaties, is one of which no time and no circumstances could, in the view of Spain, have mitigated the character.

Having thus entered, with great pain and unwillingness, into the several topics of M. Zea's Note, the undersigned is directed, in conclusion, to express the anxious hope of his Government, that a discussion, now wholly without object, may be allowed here to close. The undersigned is directed to declare to the Spanish Minister, that no feelings of ill-will, or even of indifference, to the interests of His Catholic Majesty, has prompted the steps which His Majesty's Government has taken,—that His Majesty still cherishes an anxious wish for the welfare of Spain,—and that His Majesty still retains the disposition, and commands the undersigned again to renew to His Catholic Majesty's Govern-ment the offer, to employ His Majesty's good offices, for the
APPENDIX III.

"bringing about of any amicable arrangement which may yet be "practicable, between His Catholic Majesty and the countries of "America which have separated themselves from Spain.
"The undersigned, &c.,
"GEORGE CANNING.

"The Chevalier de Los Rios."

REPLY OF MR. SECRETARY CANNING TO A LETTER OF M. RADIOS RELATIVE TO THE "RUSSIAN MEMOIR ON THE PACIFICATION OF GREECE" (g).

Foreign Office, December 1st, 1824.

"Sir,
"I have to acknowledge the receipt of the letter which you did me "the honour to address to me on the 16th of August (but which "reached my hands only on the 4th of November), expressing the "opinion of the Greek Provisional Government upon a paper "which has been published in the Gazettes of Europe, purporting "to be a Plan of Pacification for Greece, drawn up by the Court "of St. Petersburg.
"That the publication of the paper in question is unauthorised "cannot be doubted. Whether the paper itself be authentic, it is "not for me to admit or to deny; but it is due to the Court of St. "Petersburg to declare to you, that any plan of pacification "emanating from that Court would be drawn up (as the British "Government sincerely believe) in anything but an unfriendly "disposition towards Greece; that no such plan has been definitely "settled (as your letter appears to assume) with the intention of "imposing it either upon Greece or upon the Turkish Government; "and that whatever plan the Emperor of Russia might have in "contemplation would be submitted by His Imperial Majesty to "several of the Powers of Europe, His Imperial Majesty’s allies, for "their consideration, before any proposition founded thereupon "would be made to the contending parties. The Emperor of "Russia had, it is true, suggested to his allies the expediency of "proposing, simultaneously to the Porte and to the Provisional "Government of Greece, a suspension of hostilities, for the pur- "pose of allowing time for an amicable intervention between them. "Nor would the British Government have refused, at a proper time, "to be party to that proposal.
"It is but just to add that the paper which has attracted the "indignation of the Greek Provisional Government has been viewed "with no less indignation by the Divan.
"While the Greeks profess an insurmountable abhorrence of any

(g) State Papers, vol. xii. 1824-5, p. 909 et seq.
settlement short of the establishment of their independence as a
nation, the Divan abjure all modes of reconciliation short of an
unqualified re-establishment of their sovereignty over Greece.

"Between two parties so disposed there can, indeed, be little
hope of an acceptable and successful mediation. But, to have
felt and expressed a desire to mediate, before the extreme vehe-
mence of these opposite resolutions was known, and while the
varying fortune of the war appeared to furnish to both parties not
unreasonable motives for a compromise, surely cannot be imputed,
either to Russia, if she originated the project of such a compro-
mise, or to those who might have been prepared to deliberate in
concert with her upon it, as a crime.

"The paper, purporting to be a Russian memoir, contains the
elements of a compromise, though not adjusted, perhaps, exactly
in the proportions in which they might finally have been arranged
for proposal to the belligerent parties.

"If the sovereignty of the Turks were not to be absolutely
restored, nor the independence of the Greeks to be absolutely
acknowledged (to propose either of which extremes would have
been, not to mediate, but to take a decided part in the contest),
there was necessarily no other choice than to qualify, in some mode
and degree, the sovereignty of the one and the independence
of the other; and the mode and degree of that qualification seemed
to constitute the question for enquiry and deliberation.

"Either party, no doubt, had it in its power to defeat any plan
of compromise, however rational in its principles or impartial in
its provisions. And the previous knowledge that both parties
would concur in rejecting any plan of compromise that could be
devised renders any hope of successful intervention, at the present
moment, utterly vain.

"On the remainder of your letter, which, in effect, calls upon
the British Government to take part with the Greeks in the
struggle for their independence, comparing their merits and
claims with those of the Provinces of Spanish America, which
have separated themselves from the mother country, I have only
to observe, that, with respect to the contest between Spain and
the several countries of Spanish America, Great Britain has pro-
fessed and maintained a strict neutrality; and that the like neu-
trality has been observed by Great Britain in the contest now
raging in Greece. The belligerent rights of the Greeks have
been uniformly respected; and if the British Government has
found itself compelled, on a recent occasion, to repress the excess
to which certain of those rights were attempted to be carried, the
British Government is satisfied that such a necessity will not
occur again.

"The Provisional Government of Greece may rely upon the
continuance of the same scrupulous neutrality. They may be
assured, not only that Great Britain would not be concerned in any attempt (if such attempt were in contemplation) to force upon them a plan of pacification contrary to their wishes, but that, if they should at any time hereafter think fit to solicit our mediation, we should be ready to tender it to the Porte, and, if accepted by the Porte, to do our best to carry it into effect, conjointly with other Powers, whose co-operation would at once give facility to any arrangement, and afford the best security for its duration.

This appears to the British Government all that can reasonably be asked of them. They cannot accuse themselves of having in any way, directly or indirectly, instigated the commencement of the Greek enterprise, nor of having in any way interfered in its progress.

Connected with the Porte by the established relations of amity, and by the ancient obligations of Treaties, which the Porte has not violated, it surely cannot be expected that England should engage in unprovoked hostilities against that Power in a quarrel not her own.

I trust, Sir, that the exposition which I have thus the honour to address to you will be considered as affording sufficient answer to any suspicions or imputations which error or intrigue may have propagated against the intentions of the British Government towards Greece, and will be accepted as a proof at once of the purity of our views, and of the frankness with which we are ready to declare them.

“I am, &c.,

GEORGE CANNING.

“The Secretary of the Provisional Government of Greece.”

PROTOCOLE DE LA CONFÉRENCE TENUE AU FOREIGN OFFICE, LE 19 FÉVRIER 1831 (h).


Les Plénipotentiaires des Cours d’Autriche, de France, de la Grande-Bretagne, de Prusse, et de Russie, s’étant assemblés, ont porté toute leur attention sur les interprétations diverses données au Protocole de la Conférence de Londres, en date du 20 Décembre 1830, et aux principaux Actes dont il a été suivi. Les délibérations des Plénipotentiaires les ont conduits à reconnaître

(h) Protocols of Conferences in London relative to Belgium, 1830–1 part i. No. 19, pp. 59–65.
"unanimement, qu'ils doivent à la position des Cinq Cours, comme
à la cause de la paix générale, qui est leur propre cause, et celle de
la civilisation Européenne, de rappeler ici le grand principe de
droit public, dont les Actes de la Conférence de Londres n'ont fait
qu'offrir une application salutaire et constante.
"D'après ce principe d'un ordre supérieur, les Traités ne perdent
pas leur puissance, quels que soient les changemens qui inter-
viennent dans l'organisation intérieure des peuples. Pour juger
de l'application que les Cinq Cours ont faite de ce même principe,
pour apprécier les déterminations qu'elles ont prises relativement
à la Belgique, il suffit de se reporter à l'époque de l'année 1814.
"À cette époque les Provinces Belges étaient occupées militaire-
ment par l'Autriche, la Grande-Bretagne, la Prusse, et la Russie ;
et les droits que ces Puissances exerçaient sur elles furent com-
plétés par la renonciation de la France à la possession de ces
mêmes Provinces. Mais la renonciation de la France n'eut pas
lieu au profit des Puissances occupantes. Elle tint à une pensée
d'un ordre plus élevé. Les Puissances, et la France elle-même,
également désintéressées alors comme aujourd'hui dans leurs vues
sur la Belgique, en gardèrent la disposition et non la souveraineté,
dans la seule intention de faire concourir les Provinces Belges à
l'établissement d'un juste équilibre en Europe, et au maintien de
la paix générale. Ce fut cette intention qui présida à leurs stipu-
lations ultérieures; ce fut elle qui unit la Belgique à la Hollande;
ce fut elle qui porta les Puissances à assurer dès-lors aux Belges
le double bienfait d'institutions libres, et d'un commerce fécond
pour eux en richesse et en développement d'industrie.
"L'union de la Belgique avec la Hollande se brisa. Des com-
communications officielles ne tardèrent pas à convaincre les Cinq
Cours que les moyens primitivement destinés à la maintenir, ne
pourraient plus ni la rétablir pour le moment, ni la conserver par
la suite; et que désormais, au lieu de confondre les affections et
le bonheur des deux peuples, elle ne mettrait en présence que les
passions et les haines, elle ne ferait jaillir de leur choc que la
guerre avec tous ses désastres. Il n'appartenait pas aux Puis-
sances de juger des causes qui venaient de rompre les liens qu'elles
avaient formés. Mais quand elles voyaient ces liens rompus, il leur
appartenait d'atteindre encore l'objet qu'elles s'étaient proposé en
les formant.
"Il leur appartenait d'assurer, à la faveur de combinaisons nou-
velles, cette tranquillité de l'Europe, dont l'union de la Belgique
avec la Hollande avait constitué une des bases. Les Puissances
y étaient impérieusement appelées. Elles avaient le droit, et les
événemens leur imposaient le devoir, d'empêcher que les Provinces
Belges, devenues indépendantes, ne portassent atteinte à la sécurité
générale, et à l'équilibre Européen.
"Un tel devoir rendait inutile tout concours étranger. Pour
“agir ensemble, les Puissances n’avaient qu’à consulter leurs
“Traités, qu’à mesurer l’étendue des dangers que leur inaction ou
“leur désaccord aurait fait naître. Les démarches des Cinq Cours
“à l’effet d’amener la cessation de la lutte entre la Hollande et
“la Belgique, et leur ferme résolution de mettre fin à toute mesure
“qui, de part ou d’autre, aurait eu un caractère hostile, furent les
“premières conséquences de l’identité de leurs opinions sur la valeur
“et les principes des transactions solennelles qui les lient.
“L’effusion du sang s’arrêta; la Hollande, la Belgique, et même
“les États voisins, leur sont également redevables de ce bienfait.
“La seconde application des mêmes principes eut lieu dans le
“Protocole du 20 Décembre 1830.
“A l’exposé des motifs qui déterminaient les Cinq Cours, cet
“Acte associa la réserve des devoirs dont la Belgique resterait
“chargée envers l’Europe, tout en voyant s’accomplir ses vœux de
“séparation et d’indépendance.
“Chaque nation a ses droits particuliers; mais l’Europe aussi a
“son droit—c’est l’ordre social qui le lui a donné.
“Les Traités qui régissent l’Europe, la Belgique devenue indé-
pendant, les trouvait faits et en vigueur. Elle devait donc les
“respecter, et ne pouvait pas les enfreindre. En les respectant,
“elle se conciliait avec l’intérêt et le repos de la grande commu-
nauté des États Européens. En les enfreignant, elle eut amené
“la confusion et la guerre. Les Puissances seules pouvaient pré-
“venir ce malheur, et puisqu’elles le pouvaient, elles le devaient.
“Elles devaient faire prévaloir la salutaire maxime, que les événè-
“mencs qui font naître en Europe un État nouveau ne lui donnent
“pas plus le droit d’altérer le système général, dans lequel il entre,
“que les changemens survenus dans la condition d’un État ancien,
“ne l’autorisent à se croire délié de ses engagements antérieurs.
“Maxime de tous les peuples civilisés; maxime qui se rattache
“au principe même d’après lequel les États survivent à leurs Gou-
“vernemens, et les obligations imprescriptibles des Traités, à ceux
“qui les contractent; maxime, enfin, qu’on n’oublierait pas, sans
“faire rétrograder la civilisation, dont la morale et la foi publiques
“sont heureusement et les premières conséquences et les premières
“garanties.
“Le Protocole du 20 Décembre fut l’expression de ces vérités;
“il statua, ‘Que la Conférence s’occupera de discuter et de con-
certer les nouveaux arrangemens les plus propres à combiner
“l’indépendance future de la Belgique avec les stipulations des
“Traités, avec les intérêts et la sécurité des autres États, et avec la
“conservation de l’équilibre Européen.
“Les Puissances venaient d’indiquer ainsi le but auquel elles
“devaient marcher. Elles y marchèrent fort es de la pureté de leurs
“intentions, et de leur impartialité. Tandis que, d’un côté, par
“leur Protocole du 18 Janvier, elles repoussaient des prétentions
qui seront toujours inadmissibles, de l'autre, elles pesaient avec le soin le plus scrupuleux toutes les opinions qui étaient mutuellement émises, tous les titres qui étaient réciproquement invoqués. De cette discussion, approfondie des diverses communications faites par les Plénipotentiaires de Sa Majesté le Roi des Pays-Bas, et par les Commissaires Belges, résulta le Protocole définitif du 20 Janvier 1831.

"Il était à prévoir que la première ardeur d'une indépendance naissante tendrait à franchir les justes bornes des Traités et des obligations qui en dérivent. Les Cinq Cours ne pouvaient néanmoins admettre en faveur des Belges le droit de faire des conquêtes sur la Hollande, ni sur d'autres États. Mais obligées de résoudre des questions de territoire essentiellement en rapport avec leurs propres Conventions et leurs propres intérêts, les Cinq Cours ne consacrèrent, à l'égard de la Belgique, que les maximes dont elles s'étaient faites à elles-mêmes une loi rigoureuse.

"Assurément elles ne sortaient ni des bornes de la justice et de l'équité, ni des règles d'une saine politique, lorsqu'en adoptant impartiamente les limites qui séparaient la Belgique de la Hollande avant leur réunion, elles ne refusaient aux Belges que le pouvoir d'envahir : ce pouvoir elles ont rejeté, parce qu'elles le considèrent comme subversif de la paix et de l'ordre social.

"Les Puissances avaient encore à délibérer sur d'autres questions qui se rattachaient à leurs Traités, et qui ne pouvaient par conséquent être soumises à des décisions nouvelles, sans leur concours direct.

"D'après le Protocole du 20 Décembre, les Instructions et les Pleins Pouvoirs demandés pour les Commissaires Belges, qui seraient envoyés à Londres, devaient embrasser tous les objets de la négociation. Cependant, ces Commissaires arrivèrent sans autorité suffisante, et, sur plusieurs points importans, sans informations; et les circonstances n'admetaient point de retard.

"Les Puissances, par le Protocole du 27 Janvier, ne firent néanmoins d'une part qu'enumerer les charges inhérentes, soit au Territoire Belge, soit au Territoire Hollandais, et se bornèrent à proposer de l'autre, des arrangemens fondés sur une reciprocité de concessions, sur les moyens de conserver à la Belgique les marches qui ont le plus contribué à sa richesse, et sur la notoriété même des Budgets publics du Royaume des Pays-Bas.

"Dans ces arrangemens la médiation des Puissances sera tous jours requise; car, sans elle, ni les parties intéressées ne parviendraient à s'entendre, ni les stipulations auxquelles les Cinq Cours ont pris en 1814 et 1815 une part immediate, ne pourraient se modifier.

"L'adhésion de Sa Majesté le Roi des Pays-Bas aux Protocoles du 20 et du 27 Janvier 1831, a répondu aux soins de la Conférence de Londres.
"Le nouveau mode d'existence de la Belgique, et sa neutralité, reçurent ainsi une sanction dont ils ne pouvaient se passer. Il ne restait plus à la Conférence que d'arrêter ses résolutions relatives à la protestation faite en Belgique contre le premier de ces Protocoles, d'autant plus important qu'il est fondamental.

Cette protestation invoquée d'abord un droit de post-limine qui n'appartiennent qu'aux États indépendants, et qui ne saurait par conséquent appartenir à la Belgique, puisqu'elle n'a jamais été comptée au nombre de ces États. Cette même protestation mentionne en outre des cessions faites à une Puissance tierce, et non à la Belgique, qui ne les a pas obtenus, et qui ne peut s'en prévaloir.

"La nullité de semblables prétentions est évidente. Loin de porter atteinte au Territoire des anciennes Provinces Belges, les Puissances n'ont fait que déclarer et maintenir l'intégrité des États qui l'avoisinent. Loin de resserrer les limites de ces Provinces, elles y ont compris la Principauté de Liége, qui n'en faisait point partie autrefois.

"Du reste, tout ce que la Belgique pouvait désirer, elle l'a obtenu : séparation d'avec la Hollande, indépendance, sûreté externe, garantie de son Territoire et de sa neutralité, libre navigation des fleuves qui lui servent de débouchés, et paisible jouissance de ses libertés nationales.

"Tels sont les arrangements auxquels la protestation dont il s'agit oppose le dessein, publiquement avoué, de ne respecter ni les possessions ni les droits des États limitrophes.

"Les Plénipotentiaires des Cinq Cours, considérant que de pareilles vues sont des vues de conquête, incompatibles avec les Traités existans, avec la paix de l'Europe, et par conséquent avec la neutralité et l'indépendance de la Belgique, déclarent :

"1°. Qu'il demeure entendu, comme il l'a été dès l'origine, que les arrangements arrêtés par le Protocole du 20 Janvier 1831, sont des arrangements fondamentaux et irrévocables.

"2°. Que l'indépendance de la Belgique ne sera reconnue par les Cinq Puissances, qu'aux conditions et dans les limites qui résultent des dits arrangements du 20 Janvier 1831.


"4°. Que les Cinq Puissances, fidèles à leurs engagemens, se reconnaissent le plein droit de déclarer, que le Souverain de la Belgique doit répondre par sa position personnelle au principe d'existence de la Belgique même, satisfait à la sûreté des autres États, accepter sans aucune restriction, comme l'avait fait Sa Majesté le Roi des Pays-Bas par le Protocole du 21 Juillet 1814, tous les arrangements fondamentaux renfermés dans le Protocole.
du 20 Janvier 1831, et être à même d’en assurer aux Belges la "paible jouissance.

5°. Que ces premières conditions remplies, les Cinq Puissances "continueront d’employer leurs soins et leurs bons offices pour "amener l’adoption réciproque et la mise à exécution des autres "arrangements nécessités par la séparation de la Belgique d’avec la "Hollande.

6°. Que les Cinq Puissances reconnaissent le droit, en vertu "duquel les autres États prendraient telles mesures qu’ils juge-"raient nécessaires, pour faire respecter ou pour rétablir leur "autorité légitime dans tous les pays à eux appartenant sur lesquels "la protestation mentionnée plus haut élevé des prétentions, et qui "sont situés hors du Territoire Belge déclaré neutre.

7°. Que Sa Majesté le Roi des Pays-Bas ayant adhéré, sans "restriction, par le Protocole du 19 Février 1831, aux arrange-"mens relatifs à la séparation de la Belgique d’avec la Hollande, "toute entreprise des Autorités Belges sur le Territoire que le "Protocole du 20 Janvier a déclaré Hollandais, serait envisage "comme un renouvellement de la lutte à laquelle les Cinq Puis-"sances ont résolu de mettre un terme.

"Esterhazy,
"Talleyrand,
"Bulow,
"Lieven Wassenberg,
"Palmerston,
"Matuszewic."

APPENDIX IV. PAGE 46. CHAP. V. S. XXXI.

FRAUDS UPON, AND BREACHES OF FOREIGN MUNICIPAL LAW, NOT COGNIZABLE IN THE COURTS OF ENGLAND, OR OF THE UNITED STATES OF NORTH AMERICA.

No. 1.

The principle referred to in the text, that a nation which pro-"tects the forgers of the coin of another nation, commits an inter-
national offence, ought, as Mr. Chitty reasonably remarks in his note upon the passage in Vattel, to be so extended as to deny effect to any fraud upon the Government or subjects of a foreign State. A different rule, however, certainly prevails both in England and in the United States of North America.

As to England, the case usually referred to as being that in which a contrary principle was laid down, is Boucher v. Lawson, in which the opinion of Lord Hardwicke, then Chief Justice of the
King's Bench, is thus recorded:—"I think the unlawfulness of "the trade makes no difference, for it is not material to us what "the law of Portugal is, but what the law of England is; and here "in England it is not only a lawful trade, but very much encour-"aged" (i).

This judgment was delivered in the 9th year of George II.

No. 2.

In the 15th year of George III., the following case was tried in the Court of King's Bench (k):

HOLMAN et al' versus JOHNSON, alias NEWLAND.

"Assumpsit for goods sold and delivered: Plea non-assumpsit "and verdict for the plaintiff. Upon a rule to shew cause why a "new trial should not be granted, Lord Mansfield reported the case, "which was shortly this: The plaintiff who was a resident at, and "an inhabitant at Dunkirk, together with his partner, a native of "that place, sold and delivered a quantity of tea, for the price of "which the action was brought, to the order of the defendant, "knowing it was intended to be smuggled by him into England. "They had however no concern in the smuggling scheme itself, "but merely sold this tea to him, as they would have done to "any other person in the common and ordinary course of their "trade.

"Mr. Mansfield, in support of the rule, insisted, that the con-"tract for the sale of this tea being founded upon an intention to "make an illicit use of it, which intention and purpose was with "the privity and knowledge of the plaintiff, he was not entitled to "the assistance of the laws of this country to recover the value of "it. He cited Huberus, vol. ii. pp. 538, 539, and Robinson v. Bland, "to shew that the contract must be judged of by the laws of this "country, and consequently that an action for the price of the tea "could not be supported here.

"Mr. Dunning, Mr. Davenport, and Mr. Buller, contrà, for the "plaintiff, contended, that the contract being compleat by the de-"livery of the goods at Dunkirk, where the plaintiff might law-"fully sell, and the defendant lawfully buy, it could neither directly "nor indirectly be said to be done in violation of the laws of this "country; consequently it was a good and valid contract, and the "plaintiff entitled to recover. It was of no moment or concern to "the plaintiff what the defendant meant to do with the tea, nor had "he any interest in the event. If he had, or if the contract had

(k) Cowper's Reports, pp. 341-5.
been that the plaintiff should deliver the tea in England, it would
have been a different question; but there was no such under-
taking on his part. They pressed the argument *ab inconveniendi*,
and cited several cases:—MSS. *at Ni. Pri.* before Lord Mansfield,
sittings in London.—An action brought by the plaintiff's, who
were lace-merchants in Paris, for laces, (which were contraband
in this country) sold and delivered to the defendant's order at
Calais. The question made was, whether the vendor of contraband
goods at Paris was not bound to run the risk of their being
smuggled into this country. But Lord Mansfield held, that as
the contract on the part of the plaintiff was compleat by his de-
ivering the laces at Calais, he was clearly entitled to recover,
and the jury found a verdict accordingly.—Faulkney *v.* Reynous
and Richardson, East. 7 Geo. 3. B. R. since reported in 4 Bur.
2069, and 1 Black. 633. where one partner in a stock-jobbing con-
tract lent the other 1500 l. to pay his moiety of the differences on
the rescouter day; and though this was pleaded to the bond,
the Court upon demurrer overruled the plea, and held the
plaintiff was entitled to recover. Bruston *v.* Clifford, in Chan.,
before Lord Camden, 4th December, 1767. Alsibrook *v.* Hall,
in C. B., where money paid for the defendant for a gaming debt
was held recoverable by the plaintiff.

"Lord Mansfield.—' There can be no doubt but that every action
tried here must be tried by the law of England; but the law
of England says, that in a variety of instances, with regard to
contracts legally made abroad, the laws of the country where the
cause of action arose shall govern.—There are a great many
cases which every country says shall be determined by the laws
of foreign countries where they arise. But I do not see how the
principles on which that doctrine obtains are applicable to the
present case. For no country ever takes notice of the revenue
laws of another.

'The objection, that a contract is immoral or illegal as between
plaintiff and defendant, sounds at all times very ill in the mouth
of the defendant. It is not for his sake, however, that the ob-
jection is ever allowed; but it is founded in general principles of
policy, which the defendant has the advantage of, contrary to
the real justice, as between him and the plaintiff, by accident, if
I may so say. The principle of public policy is this: *ex dolo
malo non oritur actio.* No Court will lend its aid to a man who
finds his cause of action upon an immoral or an illegal act. If,
from the plaintiff's own stating or otherwise, the cause of action
appears to arise *ex turpi causid*, or the transgression of a positive
law of this country, then the Court says he has no right to
be assisted. It is upon that ground the Court goes; not for the
sake of the defendant, but because they will not lend their aid
to such a plaintiff. So if the plaintiff and defendant were to
"change sides, and the defendant was to bring his action against
"the plaintiff, the latter would then have the advantage of it;
"for where both are equally in fault, potior est conditio de-
fendentis.
""The question therefore is, whether, in this case, the plaintiff's
"demand is founded upon the ground of any immoral act or con-
"tract, or upon the ground of his being guilty of anything which
"is prohibited by a positive law of this country.—An immoral
"contract it certainly is not; for the revenue laws themselves, as
"well as the offences against them, are all positivi juris. What,
"then, is the contract of the plaintiff? It is this: being a resident
"and inhabitant of Dunkirk, together with his partner, who was
"born there, he sells a quantity of tea to the defendant, and de-
livers it at Dunkirk to the defendant's order, to be paid for in
"ready money there, or by bills drawn personally upon him in
"England. This is an action brought merely for goods sold and
"delivered at Dunkirk. Where then, or in what respect, is the
"plaintiff guilty of any crime? Is there any law of England trans-
gressed by a person making a compleat sale of a parcel of goods
"at Dunkirk, and giving credit for them? The contract is com-
pleat, and nothing is left to be done. The seller, indeed, knows
"what the buyer is going to do with the goods, but has no con-
cern in the transaction itself. It is not a bargain to be paid in
"case the vendee should succeed in landing the goods; but the
"interest of the vendor is totally at an end, and his contract com-
"pleat by the delivery of the goods at Dunkirk.
""To what a dangerous extent would this go if it was to be held
"a crime. If contraband cloaths are bought in France, and brought
"home hither; or if glass bought abroad, which ought to pay a
"great duty, is run into England; shall the French taylor or the
"glass-manufacturer stand to the risk or loss attending their being
"run into England? Clearly not. Debt follows the person, and
"may be recovered in England, let the contract of debt be made
"where it will; and the law allows a fiction for the sake of ex-
pediting the remedy. Therefore I am clearly of opinion, that
"the vendors of these goods are not guilty of any offence, nor
"have they transgressed against the provisions of any Act of Par-
liament.
""I am very glad the old books have been looked into. The
"doctrine Huberus lays down is founded in good sense, and upon
"general principles of justice. I entirely agree with him. He
"puts the very case in question, thus: Tit. de conflictu legum,
"vol. ii. p. 539. "In certo loco merces quedam prohibita sunt.
"Si vendatur ibi, contractus est nullus. Verum, si merx eadem
"ali bis sit vendita, ubi non erat interdicia, emptor condemnabitur,
"quia, contractus inde ab initio validus fuit." Translated, it
"might be rendered thus: In England, tea, which has not paid

APPENDIX IV. 561
"duty, is prohibited; and if sold there, the contract is null and
void. But if sold and delivered at a place where it is not prohi-
bited, as at Dunkirk, and an action is brought for the price of it
in England, the buyer shall be condemned to pay the price; be-
cause the original contract was good and valid.—He goes on
thus: Verum si merces venditae in altero loco, ubi prohibitae
sunt essent tradenda, jam non fieret condemnatio, quia repugna-
ret hoc juri et commodo reipublicae qua merces prohibuit."
"Apply this in the same manner.—But if the goods sold were to
be delivered in England, where they are prohibited, the contract
is void, and the buyer shall not be liable in an action for the
price, because it would be an inconvenience and prejudice to the
State if such an action could be maintained.
"'The gist of the whole turns upon this,—that the conclusive de-
elivery was at Dunkirk. If the defendant had bespoke the tea at
Dunkirk to be sent to England at a certain price, and the plain-
tiff had undertaken to send it into England, or had had any con-
cern in the running it into England, he would have been an
offender against the laws of this country. But upon the facts of
the case, from the first to the last, he clearly has offended against
no law of England. Therefore let the rule for a new trial be
discharged.'
"The three other judges concurred."

No. 3.

In the 4th year of George IV., the following case was decided in
the Court of King's Bench (l):—

JAMES v. CATERWOOD.—(June 1823.)

"Assumpsit for money lent. Plea, first, non-assumpsit, and
second, the statute of Limitations. At the trial before Abbott,
C. J., at the Second Middlesex Sittings in Easter Term, it ap-
peared that the money in question was lent by plaintiff to defen-
dant in France, in the year 1814, where both parties then resided.
To prove the loan, receipts for the money, dated in the year
1817, and signed by the defendant, but not stamped, were ten-
dered in evidence. The defendant's counsel objected to those
receipts as inadmissible, and offered to show, that by the law of
France, such receipts required a stamp; but the learned judge
being of opinion that they were admissible here, as acknowledg-
ments of the debt, without any stamp, rejected that evidence,
and the plaintiff had a verdict.

(l) 3 Dowling & Ryland's Reports, pp. 190-1.
"Chitty now moved for a new trial, on the ground that the defendant should have been allowed to produce evidence of the law of France, to show that in that country such receipts were not legal without a stamp, and contended, that as every contract must be entered into in conformity with the lex loci, it was competent to the defendant to show that this contract had not so been entered into. (Best, J.—'Can we take notice of the revenue laws of France?' Abbott, C. J.—'That is the question. In the time of Lord Hardwicke, it became a maxim, that the Courts of this country will not take notice of the revenue laws of a foreign State. There is no reciprocity between nations in this respect. Foreign States do not take any notice of our stamp laws, and why should we be so courteous to them, when they do not give effect to ours?') There certainly was a dictum of Lord Hardwicke, that an English Court cannot take notice of the revenue laws of a foreign country, but here was no solemn decision upon that point, which seems rather to have been taken for granted than grounded on any authority. It is admitted by foreign writers, and others, that though an instrument made in a foreign country may not be admissible in evidence, yet it does not make it void; but that if any use is to be made of it, evidence must be adduced to show that it has been framed according to the lex loci. Upon this principle it is a matter worthy of further consideration, whether it was not competent to the defendant to show that, by the law of France, these receipts would not be binding in that country unless stamped.

"Abbott, C. J.—'This point is too plain for argument. It has been settled, or at least considered as settled, ever since the time of Lord Hardwicke, that in a British Court we cannot take notice of the revenue laws of a foreign State. It would be productive of prodigious inconvenience, if in every case in which an instrument was executed in a foreign country, we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was or was not valid. Nothing must be taken by the motion.'

"Holroyd, J. (m), and Best, J. concurred.
"Rule refused."

No. 4.

It is difficult to strive against the authority of Hardwicke, Mansfield, and Tenterden, but the international jurist must lament that a more liberal view of international obligations, by way of comity at least, has not been taken by these great luminaries of the Eng-

(m) Bayley, J., was absent.
lish law. And it is right to add that the authority of Stowell supports a case of gross fraud upon an enemy which it is difficult to reconcile with the laxest views of belligerent morality. The case is as follows:

**Case of the London (n).**

"This was also the case of a British ship and cargo, captured by an American privateer, the captain of which offered to restore the ship and cargo to the master, on condition of his drawing a bill for 1,000l., payable in London. The master accepted the restitution on these terms, and accordingly drew a bill to that amount; but took care to send advices to London in time to prevent payment of it. A demand was now made by him for salvage on the cargo, as recaptured from the enemy. The value of the cargo was stated to be from 1,500l. to 2,000l. "The Court gave him one-tenth, and his expenses."

---

No. 5.

To these cases it should be added that it was actually held, in the case of Smith v. Marconnay (o), "that the maker of paper in England, knowingly made by him for the purpose of forging assignats upon the same, to be exported to France in order to commit frauds there on other persons, might recover damages for not accepting such paper pursuant to contract."

The same doctrine has been held by the American Courts in various cases. But Dr. Story, in his Commentaries on the Conflict of Laws, speaking as a jurist, reprobates, with Pothier, the principle of these decisions. Dr. Story says—"It might be different, according to the received, although it should seem upon principle indefensible, doctrine of judicial tribunals, if the contract were made in some other country, or in the foreign country to which the parties belong; for (as has been seen) it has been long laid down as a settled principle, that no nation is bound to protect, or to regard the revenue laws of another country; and, therefore, a contract made in one country by subjects or residents there to evade the revenue laws of another country, is not deemed illegal in the country of its origin. Against this principle Pothier (p) has argued strongly, as being inconsistent with good faith and the moral duties of nations. Valin (q), however, supports it; and

---

(n) 2 Dodson's Admiralty Reports, 74.
(o) 2 Peake's Reports, 81.
(p) Pothier, Assur. n. 58.
(q) 2 Valin. Comm. art. 49. p. 127.
"Emérimon (r) defends it, upon the unsatisfactory ground, that "smuggling is a vice common to all nations. An enlightened policy, "founded upon national justice as well as national interest, would "seem to favour the opinion of Pothier in all cases where positive "legislation has not adopted the principle as a retaliation upon the "narrow and exclusive revenue system of another nation. The "contrary doctrine seems, however, firmly established in the actual "practice of modern nations, without any such discrimination, "too firmly, perhaps to be shaken, except by some legislative Act "abolishing it." (s).

The passage in Pothier to which Dr. Story refers, is as follows:—

"Lorsque l'arrêt a été fait pour cause de contrebande, et que les "marchandises assurées s'étant trouvées de contrebande ont été "confisquées, cette perte doit-elle tomber sur les assureurs? Par "exemple, un négociant français a fait charger en Espagne clan- "destinement des marchandises de soierie, contre les loix d'Espagne, "qui en défendent l'exportation: le vaisseau a été arrêté par les "officiers du Roi d'Espagne, et les marchandises confisquées, comme "étant chargées en contrebande. Les assureurs sont-ils tenus de "cette perte? Vaslin tient l'affirmative, pourvu que les assureurs "aient eu connaissance que les marchandises qu'on a fait assurer "étaient de contrebande: car s'ils l'avoient ignoré, il n'est pas "douteux, en ce cas, qu'ils n'en seroient pas tenus: ils ne pourroient "pas être censés s'être soumis au risque de la confiscation pour "cause de contrebande, n'ayant pas de connoissance que les mar- "chandises fussent de contrebande" (t).

It appears that the judicial tribunals in Prussia do, to their great credit be it said, hold that a contract relating to the smuggling into a foreign country of goods prohibited by the revenue laws of that country, is illegal and invalid, as being contra bonos mores (guten Sitten zuwider).—Heffters, Das Europäische Völkerrecht der Gegen- wart, § 31, n. 21.

(s) Story, Conflict of Laws, c. viii. s. 257. p. 338.
(t) Pothier, Oeuvres du Traité de Contrat d'Assurance, t. iii. c. i. sect. 2, art. 2. s. 2. p. 58.
Appendix V. Page 89, Chap. VIII.

Treaties — Interpretation Of.

No. 1.

Interpretatio § 4. Pacis Monasteriensis, 30 Januar. 1648 (a).

"Longum esset exponere, quæ Pontificiorum fuerit conditio in
Belgio Frædarat ob initio Reipublicæ ad hæc usque tempora.
Ne quidem animus est commemorare, quæ in Imperio Ordinum
Generali, et quæ in singulis Provinciis conra solos Ecclesiasticos, qui Pontifici Romano adsurgunt, constituta et decreta sunt.
In rem nostram sufficit scire, ut Laici Pontificii in Belgio
Frædario libere morari semper licuit, ita Clerici, etiam ante
pace Monasteriensem, non licuisse. Jesuitæ quidem, qui in
Belgio Frædario invenirentur, 600 florenorum muletam Ordinis
Generales constituerunt in Edictis 26 Febr. 1622, 8 Sept. 1629,
et 30 Aug. 1641, ceteris omnibus Ecclesiasticis Belgio Frædari
simpliciter interdicto, exceptis duntaxat iis, qui ante annum 1622
hic habitassent, dummodo intra dies octo nomina sua ad Magis-
tratum loci, ubi degunt, deferrent, et secundum leges Ordinum
viverent.

Recte se habeant ea Edicta tempore belli Hispanici, quo facta
sunt, sed quæræ, an recte se habeat Edictum, quod Ordines
Generales post pacem Monasteriensem promulgarunt 14 Apr.
1649, quæ priora illa Edicta, quorum sententiam retulit, repetita
et servari jussa sunt? vel potius quæro, an non sœviora illa Edicta
restringi et temperari debant quod ad Ecclesiasticos, qui ex
Imperio Regis Hispaniarum, Belgio forte tunc Hispanico, nunæ
Austriaco, hic adsunt? Quæestionem facit § 4, Pacis Monaste-
riensis 30 Jan. 1648, quæ inter Regem Hispaniarum et Ordines
Generales convenit, ut olim quoque convenerat § 4, Indiciarum
9 Apr. 1609, alterius subditæ et incolis, absque ullo personarum
discrimine, in alterius Imperium recte licere advenire, ibi manere
et agere, et commercia sua exercere. Verba Belgice sic habent :
"de Onderzet en inwoonden der Landschappen van de
voorschr. Heeren Koning en Staten ... . . . . zullen ook mogen
komen en blijven in de Landschappen de een van de andere, en
daar doen hare trafique en commercie in alle versekertheid, zoó ter
Zee, andere Wateren, als te Lande.

Sane plerique Belgæ Frædariæ videntur credidisse, salva ea
pace, duriora illa Edicta explicari non posse, atque ita Ecclesiasticis Pontificii omnino prodesse d. § 4. Gelri quidem, et
Hollandi, et Frisii, et Groningani in extraordinariis Ordinum
Generaliæ Comitiis, proxime post illam pacem habitus anno

(a) Bynkershoek, Questiones Juris Publici, lib. ii. cap. 20.
1650 et 1651 proposuerunt, exercerentur Ordinum Edicta contra
effrenem Ecclesiasticorum in has Regiones veniendi licentiam, sed
hoc nominatim addito, quatenus salva pace fieri posset, cujus
nomine non alem, quam illam Monasteriensem, intellige, et ita
quoque, addita hae ipsa clausula, Ordines Generales decreverunt
27 Jan. 1651. Quia autem illa clausula parum certitudinis
habebat, idcirco in iisdem Comitiis mense Apr. 1651, proposition
est, habita ratione eorum, quae tempore inductarum acta gesta
erant, certa ei rei forma-daretur; sed traditum inveni, eam non
esse constitutam, verum ad ordinarium Ordinum Generalium
Collegium ejus rei curam, atque adeo tacite substitutum
esse in illo Decreto 27 Jan. 1651, nihil enim quicquam postea
definitum est.
Nondum igitur extricata res erat. Zelandi, ut extricarent, 22
Jan. 1651. in iisdem extraordinariis Comitiis alia rem addressi
sunt via. Existentarunt illi, non obstante eo § 4, omnes Eccle-
siasticos, qui Pontificia Sacra sequuntur, expelli, nec ullos alios
admitti posse, quod nempe illi Ecclesiastici, utut ex Imperio
Hispanico advenientes, non essent Regis Hispanicarum subditi,
sed Papae Romani. Addebat, id ipsum Regis Legatos eo tem-
pore, quo pax illa pangebatur; fuisses testatos, quin etiam Ordines
in deliberationibus, quae pacem praeecesserunt, decrevisse, nihil-
minus Edicta, contra Ecclesiasticos Pontificios facta, effectum esse
habitura. Quas rationes Synodorum Legati per libellum, iisdem
Comitiis porrectum, deinde suas fecerunt. At prima ratio apud
me parum valet, Ecclesiastici utique etiam sunt subditi; et pro
subditis habentur in omnibus Imperii Pontificiorum. Si tamen, qua
sunt Ecclesiastici, subditos Regis esse neges protier jurisdictionem
Ecclesiasticam, non negabis erte, qui ex Imperio Hispanicum ad
nos advenere, Regis Hispanicarum esse incolas, invoqueren, pax
autem loquitur de subditis et incolis, odersten en invoqueren.
Legatos Regis allud fuisses testatos, et Ordines in praevis delibera-
tionibus modo decrevisse, etiam post pacem factam tuenda esse
saviora illa Edicta, non comperi, etsi diligenter quasiverim, neque
adeo de dubius illis rationibus, quae facti sunt, quicquam habeo,
quod dicam, nec etiam de his quiquam dixerunt Gelri, Hollandi,
Frisii et Groningani, nec postea etiam Transisulani, quamvis
in Pontificios adhuc magis acerbi. Et tamen illae rationes, in
causa adeo recenti, omnes illos late non potuerunt. Hoc unum
comperi, Ordines, prierquam Legatos suas ad pacem pangendam
mitterent, simpliciter decrevisse, se tuituros puriora Sacra,
publice recepta, sed aliud est Sacra illa tueri, aliud duriora illa
Edicta exsequi. Neque etiam animadverto, quid prodesset, si
Legati Regis ante pacem factam vel tale quid garrivissent, vel
ipsi Ordines decrevissent. Quid in ipsa pace convenerit, unice
querendum, et ex ejus legibus, si quid inter Principcs incidat,
definiendum est.
"Fuit, cum putarem, d. § 4, duntaxat esse intelligendum de "ejusmodi subditis et incolis, qui commercia exercent, atunt "enim verba finalia, quae exhibuit, en daar doen hare trafique en "commercie. Sed bona fides illam interpretationem respuit, nam, "quod de mercatura additur, non aliam causam habet, quam quod "eo plerumque fine alterius subditii alterius Principis Imperium "frequentent, non quod interdicatur alterius subditii in alterius "Imperium advenire, et ibi forte otari, philosophari, et procul "negotiis securrem agere aevum. Hac igitur sententia nunc non "utor, maxime quem alia, et, ni fallor, verior succurrat. Nempe "Clericatus Pontificio, postquam emendatior Religio publice re- "cepta fuit, in hisce Regionibus crimini speciem quandam ha- "bebant, neque enim cuiquam hic impune Clerico esse licebat, qui- "busdam Clerici posta mulcta, et omnibus, ut dixi, advenis Belgio "Foederato interdicto, quin et indigenis sub certo modo. Sic "leges moresque ferebant, etiam ante pacem Monasteriensem; "criminosis autem, ex mente d. § 4, quamvis in alterius Imperio "habitarent, in alterius Imperium, ubi criminosi sunt, advenire "nequaquam licet. Factus est d. § 4, belli finiendo ergo inter "Regem et Ordines, ut sic, quemadmodum ibi palam expressum "est, inter utriusque subditos cesset, quicquid antea hostile fuit, "sed non ut essaret perpetuato criminum, que, etiam extra "causam belli, leges publice vindicabant. Quare d. § 4, probosse "nequit Ecclesiastici, quamquam Hispaniarum Regis subditis, "quia et ante illam pacem proscribebantur, et proscribebantur non "tanquam Regis Hispaniarum subditii, sed tanquam Ecclesiastici, "omnia enim Principum Ecclesiastico Pontificios, etiam eorum, "quibuscum pax erat, eadem lex arcebat. Unde manifestum est, "antequam Ecclesiastici, ut Regis Hispaniarum subditii, etiam hic "admitterentur, nova opus fuisse pactione, ex qua, quo citra belli "causam lex repellebat, hic adesse liceret, eujusmodi pactio nun- "quam intercessit. An tu putas, qui non propter bellum, sed "propter crimen aliquod, ex Belgio Foederato relegati deportative "in Ditionem Regis Hispaniarum concesserant, et ibi, qua subditii "vel incolae, aliquamdiu egerant, an, inquam, tu putas, ipsis, si "animum revertendi haberent, per d. § 4, in Belgio Foederate esse "licere? ego non puto. Exemplo res fiet clarior. Omnes Judaeos "impia pietate, et in manifestam Imperii sui pecuniem Hispani "proscripterunt, et in aliis etiam Imperiis indumentius habentur, "sed alter Hollandi, mercator Populus, sentiunt, apud hos enim "Judaei, Gens ad Rempublicam commerciis frequentandam utilis- "sima, adeo benigne recepti sunt, ut utantur iisdem Legibus et "Privilegiis, quibus utuntur ceteri Hollandiae subditii et incolae. "Quero igitur, an Judaeus ex Hollandia, Judaeorum notricula, "post d. § 4, in Hispaniam commeare, ibique liber morari possit? "Si me audias, non poterit, nam, qua Judaeus, dui ante d. § 4, "proscriptus est, nec proscriptis favet ille §. 4."
Quamvis autem illa, quam dedi, interpretatio d. § 4, videatur verissima, dubito tamen, an Ordines Hollandiae ea uii possint. Quum enim Judeos quosdam Hollandos male acceperissent Hispani, et Judaei ea de re essent questi apud Ordines Hollandiae, hi 12 Jul. 1657, decreverunt, Judeos illos, male acceptos, habendos esse pro subditis et incolis Fœderati Belgii, ideoque et gaudere oportere eodem jure et privilegiis, quæ ex pace, cum Hispanis pacta, aut ex Pacto marinó, vel ex quibusque aliis Conventionibus, cum aliis Regibus, Rebuspublicis, Principibus, Ordinibus, Urbibusve factis, hujus Reipublicæ subditis et incolis competunt. Quum enim Judæos quosdam Hollandos male acceperissent Hispæni, et Judæi ea de re essent quest!, apud Ordines Hollandiae, hi 12 Jul. 1657, decreverunt, Judæos illos, male acceptos, habendos esse pro subditis et incolis Fœderati Belgii, modo ne ipsi in Hispæni venirent.


No. 2.

Letter of Sir Leoline Jenkins to the Lords of the Privy Council (b).
"To the Right Honourable the Lords of His Majesty’s Most Honourable Privy Council, appointed a Committee for His Majesty’s Plantations."
"December 1, 1668."
"My Lords,"
"The affair of St. Christopher’s(whereof I am in obedience to your Lordships now to give an account) seems to resolve itself into these following inquiries:—"

(b) Life of Jenkins, vol. ii. p. 735.
"First, whether the French instruments of Cession, and the
"Most Christian King's despatches and orders for the restoring of
"His Majesty's part of that island, be valid and sufficient?
"I cannot say, my Lords, but that the instrument of Cession is
"full enough, and agreeable to the best legal forms now current in
"France and Italy. Of the despatches there is this account to be
"given.
"In the first, dated August 28, 1667, the order for Restitution
"was full and clear, without any proviso or condition, yet it ob-
tained not the effect expected. The pretence was that the Com-
mander-in-Chief, M. de la Barre, was out of the way when my
"Lord Willoughby made his demand: but it seems that was not
"all; for when Colonel Lambert made the same demand about
"two months after, at Midsummer last, M. de la Barre made the
"very same difficulties and demands that the French Ambassador
"now makes in his last Memorial.
"In the second despatch, dated the 17th of July last, the most
"Christian King does (upon His Majesty's Letter) bewail the dis-
appointment to my Lord Willoughby in very passionate language,
"both as it reflected upon the honour of a Prince, tender of nothing
"so much as of his word; and as it appeared to be a dissatisfaction
"to our most gracious Sovereign; and (to make amends) the
"French Governor is commanded, whether M. de la Barre be in
"the way or not, to deliver up his part to His Majesty, all delays
"and pretences whatsoever laid aside, under pain of disobedience
"and rebellion. This despatch likewise (in all probability) obtains
"no effect. For M. de Lyonne advises my Lord St. Alban's that
"it was desired in the French Court that this despatch should not
"be sent away hence: M. de la Barre having been written to, to
govern himself as M. Colbert should direct from hence, and not
"according to these orders.
"The last despatch, dated the 31st of October last, varies from
"the tenour of both the former; for it supposes the word habitations
"to be within the intendment of the VIIIth Article; and conse-
"quently, that the French bought the English houses and lands,
"as well as their stocks and moveables. And then it takes for
"granted, that M. Colbert has satisfied His Majesty that the English
"are not to be restored to their plantations, till they do reimburse
"the French of their demands. So that this despatch being
"compared with the Ambassador's Memorial, promises no great
"effect.
"For the Ambassador desires: 1. That the French, who shall
"become subjects to this Crown, may be treated in all respects
"as English. 2. That they be not in the least disturbed in their
"possessions, till we pay them back their purchase-money. 3.
"That we give them content (that is the word, which cannot imply
"less than good security) in the demands they make for improve-
4. That His Majesty would please to prefix a day, within
which the English shall be bound to reimburse the French; and
in default of doing so, the English to be declared for ever inca-
cpable of being restored to their own: This implies, that very
much is expected to be done on our part, before the French do
anything on theirs; as if the VIIIth Article were a necessary
condition, antecedent to the performance of the VIIth, which is
not only distant from the sense of the article, but contrary to the
tenour of this and all other Treaties. And though the King's
letter mentions no more but the reimbursement of the purchase-
money, yet it is with a bien entendre, that this must be done
effectually, before the English be restored to their possessions.

Another inquiry is, whether the word Bona comprehends lands
and houses, as well as stock, and those moveables which we call
a personal estate?

It cannot be denied, my Lords, but that the word Bona, in
the Roman Civil Law, as also in the present laws and customs of
the French, comprehends both the one and the other in many cases;
though in this case it does not, as may be evinced by several
arguments.

First, In this Treaty with the Dutch and the Dane at Breda,
the clauses and provisos concerning lands and moveables on
the one side, and concerning goods and moveables on the other,
are still distinct and separate, as things opposite in their notion.
For instance, in the Treaty with the Dutch, the right of all lands,
towns, forts, places, and colonies, is, in the IIIrd and VIth Articles
settled one way; and in the IVth and VIIth, that of Bona
cuncta mobilia, another way: Just so it is with Denmark in the
Vth; their moveables, Quicquid Bonorum, fall under one provi-
sion, and in the VIIth, their territories under another: 'Tis so in
the elaborate Treaty of the Pyrenees, 1659. For moveables, des
Debts, Merchantdizes, Effects, and Meubles, it has distinct Articles,
the XXIIInd and XXIXth, but nothing moveable mingles in
those other Articles that do settle lands, territories, and real estates.
So it is in the Treaty of Chasteau Cambresis, and several others.
The Territory, therefore, and Sovereignty of St. Christopher's,
being the subject-matter of the VIIth Article of the Treaty with
France, the word Bona, in the following Article (in this Treaty
as well as in the others) must mean moveables and nothing else;
for the Forma Communis must needs, in construction of law,
be here intended and observed, since the variation from it is not
expressed. And it cannot be well imagined, that the word Bona
should signify one thing to the Dutch and Dane, and another	hing to the French, where both the subject-matter of the debate,
and the persons treated with by the three parties, were the very
same. From these concurrences, the law raises validissimam con-
jecturam, and a full light wherewithal to clear the ambiguity.
"Secondly, The case of the English is extremely favourable; 'tis to be restored to their own by a sacred compact; and the word Restitution is so favourable, that when a heinous malefactor hath it in his pardon from his Prince, it does not only take off his punishment, but also restore him to his good name, honours, and estate: much more then shall those that are restored ex debito justitiae, recover everything that the Treaty does not in very clear and express terms deny them.

"Thirdly, The civilians and feudists do hold, that lands held by such tenures and services as the English held theirs in this island, are not comprehended under the word Bona; and in this very case, when they say, (and 'tis a very common saying) Bona in bello capta cedunt occupanti, they must mean moveables only; the lands and houses going another way, that is, to the conqueror.

"Fourthly, By the VIth Article of War, upon the surrender to the French, the English had power to dispose of their immovables, and to carry away their moveables, excepting negroes and cattle, 'tis clear they could dispose of no more than what the Treaty gave them leave to do, all the rest being devolved to the French Jure Belli; therefore, since they had not power granted them to dispose of their Fonds, Maisons, and heritages, their houses and lands did not pass. The word Immeubles, when opposed to Meubles in the French laws, signifies no more than what we call chattels real, parcels of the freehold, and choses in action, here in England.

"But if it be urged, that the English have made over, not only their moveables, but their lands and houses, to the French by firm conveyances, it is humbly conceived, that whatever those contracts were, they are not to be measured and expounded by the Treaty. Besides, these conveyances were some of them void, as being forced by threats and terrors; some of them voidable, as being under half the real value, and some of them utterly feigned and false. An instance whereof is given in Captain Free-man, who was before your Lordships the other day. He passed away his estate to M. de Chambers, Director of the West India Company, for 40,000 sugars, that is, about 400l. sterling: his estate was worth 1000l. a year, and 'tis set down in the contract that he has received all these sugars; yet he utterly denies the receiving of one penny value; nay, that he was forced to pay 20,000 sugars for a boat to this purchaser, to carry himself and his family.

"A third question is, whether the French are bound to repair His Majesty's three forts, that they have demolished, since the publishing of the peace?

"There is no express provision, my Lords, in the VIIth Article, about rendering the forts to His Majesty. But in case the French (with whom the English are to be taken pari passu) had been
APPENDIX V.

"beaten out of the island, the rule given to the English was, Nihilominus in eum Statum restituuntur Galli, in quo initio anni 1665 erant. And the Dutch stipulating to surrender forts among other things, in case they should take them after the 10th of May, do promise that bona fide in eodem planè statu confestim restituuntur quo tum temporis reperientur; quandocunque de instaurât Pace in iisdem Locis constabit. And when forts are to be rendered, they must not be demolished places; for in interpreting of Treaties, the rule is verba artis (as a fort is) secundum artem intelligenda sunt.

"A fourth inquiry is, concerning the improvements and the costs, which the French are said to be at upon the plantations.

"What the Ambassador's Memorial hath, of all laws and all nations allowing for necessary expenses and improvements, is under favour to be understood, when the possessor is in bona fide; but if he be malus fidei possessor, an usurper solemnly denounced against, yet continuing his usurpation by force of arms, he shall be so far from recovering his layings out, that he shall account for the profits he hath received to a farthing; but putting the case, that the French had been all this while in bona fide, as they were till my Lord Willoughby summoned them; yet when their demands are not liquid, the law allows them not to detain the thing improved; they must accept of security, to be reimbursed of what shall appear to be justly due. This was offered the French by Colonel Lambert, when he made his demand in June last, but it was not accepted.

"Besides, in purchases that are subject to Restitution, by that which the French call Retraict Lignager, the buyer is expressly forbidden in France to lay out any more or other charges in building or repairing than are purely and absolutely necessary, within the year and the day allowed to the next of kin to come in. The reason is, that the purchaser may not, by expenses unneces-sarily laid out, render the recovery of the thing more difficult to the family. The restitution of the English in this case is no less favourable: Therefore, whatever the French have laid out since the knowledge of the Treaty, upon pretence of improvements, they have laid out in their own wrong, and by the equity of law are precluded, and have no colour to demand any account, satisfaction, or reimbursement from the English.

"The extravagant demand, my Lords, of almost 7,000l. sterling, for food and necessaries to the English prisoners, and of 800l. for chirurgeons about them, needs not, as I conceive, any answer, till it be known what reparations the English are like to have for the waste, the spoil, the demolition acted upon their plantations since the peace.

"So that, my Lords, upon the whole matter, the true and honest meaning of the Treaty being, that the Most Christian King, on
his part, do forthwith order his subjects to quit all the planta-
tions they are possessed of, and to leave the English part entirely
to the English; and that His Majesty, on the other side, do not
suffer the English to lay claim to their own cattle, slaves, or other
goods, unless they do first lay down the money or value, for which
they formerly sold them; but that the French be at liberty to
carry them away, or otherwise dispose of them as their own: If
the French have made any improvements before notice of the
peace, they ought to be reimbursed; if they have done us any
damages since, they ought to repair them. This I hope will be
done, and nothing less than this can be done, if the French do,
as the Most Christian King in his two first despatches directs,
proceed sincèrement et en bon foy. But as to the particular
demands of disbursements for meliorations, and for prisoners on
their side, and the demands of reparation for waste, spoil, and utter
demolition on our side, they must, as I humbly conceive, be left
to Commissioners to be adjusted upon the place. All which I
do most humbly submit to your Lordships' high wisdom.”

No. 3.

**In the Exchequer Chamber.**

MARRYAT v. WILSON IN ERROR (c).

“A writ of error having been brought in this Court on the judg-
ment given in the Court of King's Bench between these parties,
(vid. 8 T. R. 31.) the case was argued early in this term by Rous
for the plaintiff in error, and Gibbs for the defendant; the general
line of argument, however, being the same as that in the King's
Bench, and much commented on in the judgment of the Court,
it was thought unnecessary to do more than subjoin in the form
of notes to the following judgment whatever appeared at all new
or material.
The Court took time to consider of their opinion, which was
day delivered by,

‘Enr, Ch. J.—‘The substance of this record having been very
recently stated to the Court, and the record at large being to be
found in the Term Reports, I shall content myself with referring
to it, stating so much of it only as may be necessary to introduce
the questions which have arisen upon it. This is an action upon
policies of insurance set forth in the first, third, and fifth counts
of the declaration. That in the first count being a valued policy
on one moiety of the ship Argonaut, Collet master, at and from

(c) 1 Bosanquet & Puller's Reports, 430-446.
APPENDIX V.

"Bourdeaux to Madeira, and the East Indies, and back to America, with liberty to touch, stay, and trade to all ports and places whatsoever or wheresoever on the outward or homeward-bound voyage; and this policy is stated and found to have been effected by the plaintiff for the use of John Collet. The policy in the third count being a valued policy on goods, neutral property on board the same ship, on a voyage at and from Bourdeaux to the East Indies, with liberty to touch, call, and trade at all ports and places or islands whatsoever and wheresoever, as well at the Cape as on this or the other side of the Cape of Good Hope, until her arrival at her port of discharge at Bengal; and this policy is also stated and found to have been effected for the use of the said John Collet. The policy in the fifth count being on goods warranted American property laden on board the same ship for a voyage at and from Madeira to her last port of discharge in India, with liberty to touch, stay, and trade at all ports, places, and islands whatsoever and wheresoever, as well at, as on this and on the other side of the Cape of Good Hope; and this policy is stated and found to have been effected for the use of the said John Collet and one Anthony Butler.

"The defendant underwrote all these policies, and a loss has been sustained both of ship and cargo which is admitted to be within the terms of the policy; but it has been insisted upon the part of the defendant that the voyages described in these policies are illegal voyages, and as such cannot be made the subject of contracts of this nature, and therefore that the defendant is not bound by these contracts to make good his proportion of the loss.

"The facts of the case upon which this charge of illegality is founded, as may be collected from the special verdict in this case, are these: John Collet and Anthony Butler, on whose account these policies were respectively effected, appear to have been natural-born subjects of His Majesty, but to have been resident and domiciled within the United States of America, the latter before the declaration of the independence of the United States, the former at a period subsequent to the ratification of such independence. On the 12th of June, 1795, they became the owners of this vessel in moiety; on the 25th of July, 1795, Collet sailed in her as master, having a cargo of corn and flour on board, from Philadelphia for France, with a view of proceeding from thence with the ship, after the disposal of her cargo there, to Madeira and the East Indies, and from thence back to the United States. On the 1st of May, 1796, Collet arrived with this ship at Brest, and there sold his flour; he afterwards proceeded to Bourdeaux, where he sold the remainder of his cargo, and he there shipped on his own account the goods mentioned in the second of these policies. While the ship remained at Bourdeaux, Collet came to London, and having procured a credit with
the plaintiff in this cause, he, the plaintiff, purchased here upon
his own credit by commission goods and merchandise of British
growth and of British manufacture on account of Collet and
Butler, and these are the goods which are the subject of the third
of these policies.

The plaintiff by the direction of Collet, and during his stay in
London, shipped these goods in the port of London, on the joint
account and risk of Collet and Butler on board three American
ships, in which they were carried from London to Madeira for
the purpose of being there re-shipped and put on board the
Argonaut, and of being carried in that ship, together with the
goods shipped on board her at Bourdeaux from Madeira, to the
British territories in the East Indies, and of being imported into
those territories, and traded, trafficked, and adventured in there;
and it appears that at the time of this loss, Collet and Butler re-
mained debtors to the plaintiff for the amount of these goods.
On the 1st of May, 1796, the Argonaut sailed from Bourdeaux
with the goods there taken on board her for Madeira, in order
to there to meet, receive, and take on board the goods shipped from
London: she arrived at Madeira and took those goods on board
there, and afterwards sailed from Madeira in the prosecution of
her voyage to the East Indies, in the course of which voyage she
was seized by the commander of a squadron of the King's ships
on suspicion of being an illicit trader, and this has been con-
dered throughout the cause on all sides as a total loss of the ship
and cargo.

It seems to have been admitted on all sides in this cause, that
this voyage and the trade and traffic intended to have been car-
rried on by the Argonaut with the British territories in the East
Indies, is to be considered as illegal and the ship an illicit trader,
unless the voyage and the intended trading were legalised by the
Treaty of Commerce which was entered into between Great Britain
and the United States of America on the 19th of November, 1794,
which was afterwards ratified by the United States on the 14th
of August, 1795, and by His Majesty on the 28th of October in
that year, and retrospectively confirmed by Parliament in the
37 Geo. III.

By the 11th article of that Treaty it is agreed that there shall
be a reciprocal and entirely perfect liberty of navigation and
commerce between their respective people in the manner, under
the limitations, and on the conditions specified in the Treaty.

By the 13th article His Majesty consents that the vessels be-
longing to the citizens of the United States of America shall be
admitted and hospitably received in all the seaports and harbours
of the British territories in the East Indies, and that the citizens
of the said United States may freely carry on a trade between
the said territories and the said United States, in all articles of
which the importation or exportation respectively to or from the
said territories shall not be entirely prohibited: provided only
that it shall not be lawful for them in any time of war between
the British Government and any other Power or State whatever,
to export from the said territories, without the special permission
of the British Government there, any military stores, or naval
stores, or rice. The citizens of the United States are to pay no
higher tonnage duty than British vessels pay in the ports of the
United States, and they are to pay the same import and export
duties as are paid by British vessels. It is expressly agreed that
the vessels of the United States shall not carry any of the articles
exported by them from the said British territories to any port or
place, except to some port or place in America, where the same
shall be unladen, and such regulations shall be adopted by both
parties as shall be found necessary to enforce the due and faith-
ful observance of this stipulation. This article is not to extend
to allow the vessels of the United States to carry on any part of
the coasting trade of the British territories: and for explanation
it is added, that vessels going with their original cargoes or part
thereof, from one port of discharge to another, are not to be con-
sidered as carrying on the coasting trade. This article contains
some other provisions by which Americans are to govern them-
theselves in their intercourse with the British territories, but nothing
arises upon that part of the article material to the present subject.

"On the part of Mr. Marryat, the defendant in the action, it has
been insisted by Mr. Rous, who entered very fairly into the real
merits of the case, that according to the true construction of this
Treaty, viewing it in all its parts, and attending both to the letter
and the spirit of it, the trade to be carried on between the British
territories in the East Indies and the United States is a direct
and immediate trade from the United States to the British terri-
tories, as well as from the British territories to the United States,
which unquestionably must be direct and immediate, it being
expressly agreed that the vessels of the United States shall not
carry any of the articles exported by them from the British ter-
ritories in the East Indies, to any port or place, except to some
port or place in America, where the same shall be unladen; and
consequently that the voyages insured from Bourdeaux and from
Madeira, not being protected by the moiety, were ex concessis illegal.

"Mr. Rous's verbal criticism upon the word between was in-
ingenuous and well supported: but in truth there is hardly a word
in the English language less precise in its meaning or more in-
definite in its application than the word 'between.' According
to the context it is used to express the strictest local sense of
'to and from,' or the most remote relation which any one thing
can have or bear to another. For instance, when we say that the
inlet from the Western Ocean to the Mediterranean is between
"the coast of Spain and the coast of the empire of Morocco, it
marks geographical lines precisely drawn. But if we were to say
that the intercourse between the coast of Spain and that of the
empire of Morocco was interrupted by the religious opinions and
the habits of living prevailing in the two countries, the word
'between' would have no other effect than to point out the
countries or nations whose intercourse is spoken of as interrupted
by the causes enumerated, and would mean no more than what
is meant by the same word in the 11th article of this Treaty, where
the expression is 'between their respective people.' When we
leave this narrow ground of argument, and proceed to consider
the whole context of this article, the generality of the expres-
sions, the most obvious interpretation of those expressions, and
all the probable and possible consequences which may follow
from our exposition of this article, the subject expands itself to
an alarming magnitude, and the argument would take a very
wide compass indeed if it were now to be entered into for the
first time: but after the very elaborate discussion which this
cause has undergone in the Court of King's Bench, where a
solemn judgment was pronounced at the close of a fourth argu-
ment, and considering that that judgment has now been submitted
to our review upon arguments which, though very ably put, have
not materially varied the state of the questions which have been
made and decided upon by that Court, we do not feel ourselves
called upon to enter very much at large into the subject, and I
shall content myself with stating as shortly as I can the grounds
upon which the unanimous opinion of this Court, that the judg-
ment of the Court of King's Bench is not erroneous and ought
to be affirmed, may be supported.

"The language of the 13th Article is that the citizens of the
United States may freely carry on a trade between the said terri-
tories and the said United States, in articles not entirely pro-
hibited. They are therefore not restricted to trade in articles of
the growth, produce, and manufacture of the United States: it
is enough that the articles they trade in are not articles prohibited
from being imported to the British territories in India, or ex-
ported from thence by anybody. If, then, they propose to trade
with the British territories in India in foreign commodities, as
they may do, they must use means to furnish themselves with
those commodities. In the nature of things it must be done in
a course of trade. The obvious course of trade is that they
should carry their native commodities to other countries where
they can be exchanged with the most advantage for articles proper
for the East India market, and that they should then proceed to
India in order to carry on a trade there in those articles. I
find nothing in the Treaty which will warrant me in saying that it
was the intention of the contracting parties that the trade conceded
by the Treaty should not be so carried on. Mr. Rous found
himself obliged to acknowledge that the citizens of the United
States might within the terms of this Treaty first import into
America the articles in which they propose to trade with the
British territories in India, and then export them from America
in a direct voyage to the East Indies, and he could not deny that
they might have imported these articles into America even from
London. Indeed it would have been a most extraordinary state
of things if they might have gone to every other market for the
goods they wanted, but that the British market was excluded.
And as to the apparent disadvantage under which the citizens of
the United States would carry on trade with the British terri-
tories in India so conducted, Mr. Rous argued, that so to under-
stand the Treaty would be only to give the fair and due preference
to the great national commerce of the East India Company.
Whether this trade should have been conceded under any quali-
fications or restrictions is one thing, it having been conceded,
now to attempt to cramp it by a narrow, rigorous, forced con-
struction of the words of the Treaty is another and a very different
consideration. We cannot suppose that an indirect advantage
was intended to be reserved to the East India Company by so
framing the Treaty that the American trade might by construction
be put under disadvantage: because this would be a chicanery
unworthy of the British Government and contrary to the charac-
ter of its negotiations, which have been at all times distinguished
for their good faith to a degree of candour which has been sup-
posed sometimes to have exposed it to the hazard of being made
the dupe of more refined politicians. The nature of the trade
granted in my opinion fixes the construction of the grant. If it
were necessary to go farther, strong arguments may be drawn
from the context of this article and the contrast which the com-
paring it with the preceding article will produce. From the
context it appears that the trade was to be free, subject only to
certain specific regulations. The citizens of the United States
are put upon the same footing as to duties with British subjects.
No question is proposed, no means of ascertaining the fact are
provided, where they come from, though it is anxiously stipulated
where they are to go to. The words 'original cargo' are to be
found in the article, and it was supposed they might be used as a
ground to infer that the trade was to be direct from the United
States. But 'original cargo' is plainly set in opposition to the
cargo to be taken in in India. The provision respecting it is that
though the coasting trade is not permitted to the citizens of the
United States, they may carry the cargo, which they originally
brought with them, into the ports of the British territories from
one port of delivery to another, for the purpose of a market.
The word original serves the purpose for which it is used per-
"fectly well, and it marks a total indifference to the question where
the cargo was picked up. I have already had occasion to take
notice that as to the cargo to be imported, no other restriction or
qualification was in the view of the contracting parties than that
it should consist of articles not expressly prohibited. But when
this article is contrasted with the preceding article, the true con-
struction of it will be seen in a still clearer point of view. The
12th Article is in substance, that it shall be lawful for the citizens
of the United States to carry to any of His Majesty's islands and
ports in the West Indies from the United States in their own
vessels, not being above seventy tons, any goods or merchandise
being of the growth, manufacture, or produce of the said States,
which British vessels might carry to the islands from the said
States, and that the citizens of the United States may purchase,
load, and carry away in their said vessels to the United States
from the islands, all such articles being of the growth, manufac-
ture, or produce of the islands, as British vessels could carry
from thence to the said States, provided that the American
vessels carry and land their cargoes in the United States only, it
being agreed that the United States are to prohibit and restrain
the carrying any molasses, sugar, coffee, cocoa, or cotton in
American vessels, either from His Majesty's islands or from the
United States, to any part of the world except the United States,
and there is a proviso that British vessels may import from the
islands into the United States, and may export from the United
States to the islands, all articles of the growth, produce, or manuf-
ufacture of the islands or of the United States respectively, which by
the laws of the said States might be then imported or exported.
"'The trade to be carried on between the citizens of the United
States and the British West India islands, by virtue of this article,
is required to be in goods of the growth, produce, or manufacture
of the islands and United States respectively. This trade, in the
nature of it, must be immediate and direct. It could not be in
the contemplation of the contracting parties that it might be cir-
cuitous, except indeed within the limits of the United States and
within the range of the British West India islands, and so far, as
I take it, it is circuitous. The contracting parties could not look
to so remote a possible case as that a citizen of the United States
might load the native commodities of the United States in a
foreign port, and therefore we are not driven to collect the
meaning of this article from the precision of the language it uses.
Its language is however most precise. The terminus ad quem and
the terminus ad quem are designed with as much certainty as
would be required in an indictment for not repairing a particular
part of the King's highway. And to exclude all possibility of
misapprehension, to mark how entirely this trade was to be im-
mediate and direct, a provision is added that the United States
"are to prohibit the carrying goods of the produce of the West
"India islands in American vessels to any port of the world except
"the United States. Thus contrasted, those articles afford an
"illustration of the internal evidence of the import and true intent
"and meaning of each considered separately, and the conclusion
"from the whole appears to us to be irresistible that the trade to
"be carried on under the 12th Article between the United States
"and the British West India islands, is a direct trade, and that the
"trade to be carried on between the United States and the British
"territories in the East Indies, under the 13th Article, may be as
"circuitous as the enterprising spirit of commerce can make it.
"There may be reason to apprehend that such an intercourse with
"the British territories in the East Indies may prove very injurious
"to the interests of the East India Company, and to Great Britain
"in respect of the great national commerce which is carried on by
"that Company. In particular there may be reason to apprehend
"that this Treaty will open a door to many of our own people
"whom the policy of our laws has shut out from a direct trade to
"the East Indies. In truth it can hardly be expected that the
"spirit of commerce, too often found eluding laws made to keep
"it within bounds, that the lucri bonus odor should not embark
"British capital in this trade. This ought to have been foreseen,
"and therefore I conclude it was foreseen, and that it was found
"that the balance of advantage and disadvantage preponderated in
"favour of the Treaty. If not, those who advised it will have to
"answer for it: the responsibility is not with us. We are not
"even the expounders of Treaties. This Treaty is brought under
"our consideration incidentally as an ingredient in a cause in
"judgment before us: we only say how it is to be understood be-
"tween the parties to this record. This we are bound to do; and
"we have but one rule by which we are to govern ourselves. We
"are to construe this Treaty as we would construe any other instru-
"ment public or private. We are to collect from the nature of
"the subject, from the words and from the context, the true intent
"and meaning of the contracting parties, whether they are A.
"and B., or happen to be two independent States. The judges
"who administer the municipal laws of one of those States would
"commit themselves upon very disadvantageous ground,—ground
"which they can have no opportunity of examining, if they were
"to suffer collateral considerations to mix in their judgment on a
"case circumstanced as the present case is. It has been urged
"that in this instance (at least as to the goods in the third policy)
"this was a commerce direct from this country, and that this
"Treaty does not open a trade between Great Britain and the
"British territories in the East Indies to the prejudice of the
"monopoly vested in the East India Company. This objection is
"plausible, but not founded. The circumstance that this part of
the cargo of the Argonaut was procured here, and the share
which the plaintiff Wilson had in procuring it, might have de-
served consideration as evidence of a collusion, by means of
which Wilson was carrying on for himself an illicit trade to the
East Indies, which might have subjected this ship and cargo, or
this part of the cargo, to seizure and confiscation. But this use
has not been made of the facts found by the special verdict: and
no other use, consistent with our opinion of the legal effect of
the Treaty, could be made of them. For a citizen of the United
States being allowed to trade to the British territories in India,
generally with an exception of a few articles only, as he may
take in his cargo in the ports of his own country, so he may
take it in in the ports of this country as well as any other; and
he may employ an agent, and that agent may be a British sub-
ject. It is a lawful agency. It seems to me impossible to main-
tain in argument that the subject of a nation in amity who may
trade to the British territories in India, should be excluded from
one market for his outward investment, when all other markets
are open to him, and when it is distinctly admitted that the
markets of all the world, including ours, circuitously must be
open to him.

'There remains one other topic of which I am called upon to
take some notice. It is said that Collet, who is solely interested
in the two first of these policies, and has a joint interest with
Butler in the last, being a natural-born subject of this country,
cannot shake off that character and become an American, so as
to entitle himself to the protection of this Treaty. He is a British
subject trading to the East Indies: his trade is therefore illicit:
the voyages insured are illegal: and the policies are void. Or,
perhaps the objection ought to be put another way, thus: The
vessels in which only the trade can lawfully be carried on between
the United States and the British territories in India, according
to the provisions of the statute 37 Geo. III. c. 97, must be
owned by subjects of the United States, and whereof the master
and three-fourths of the mariners, at least, are subjects of the
United States: whereas this vessel, the Argonaut, was in part
the property of a natural-born subject of this country, and this
part-owner was also the master: consequently she was not owned
by a subject of the United States, nor navigated by a master a
subject of the United States, within the true intent and meaning
of the navigation laws, and particularly the statute 37 Geo. III.
c. 97. The conclusion will be the same. The voyages insured
were therefore illegal and the policies void. This is the only
point in the case which has appeared to me to have any difficulty
in it. I must confess that when I found it stated as a fact in
this special verdict that Collet and Butler were natural-born
subjects of His Majesty, I felt myself embarrassed, and I could
"not readily disengage myself. And when I found that in the "year 1797 there had been a reference from the Privy Council to "the then Advocate-General and the two law officers of the Crown, "and that they had concurred in opinion that the master of an "American vessel, a subject of the United States domiciled there, "but in fact a natural-born subject of Great Britain, was not to "be considered as a subject of the United States within the meaning "of our navigation laws, founding themselves upon an opinion "of Lord Hardwicke when he was Attorney-General, and that the "Council had adopted and acted upon that opinion, I felt my diffi-"culty increase upon me; for, though this was not a judicial deci-"sion (as in the argument at the bar of the Court of King's "Bench it was supposed to be), it was certainly of the highest "authority next to a judicial decision; it was a public act of the "Executive Government, founded on the advice of eminent and "learned men, whose situations called upon them to make them-"selves well acquainted with our navigation laws, and must have "made them very familiar with all the questions which had arisen "upon those laws: and it was therefore entitled to very great "respect from me. It may be observed that this order might have "been followed by a judicial decision. It purports to recommend "that, under the actual circumstances, the vessel should be admitted "to an entry though she was not navigated according to law. Not-"withstanding the order, and the entry in consequence of it, the "vessel might have been seized and prosecuted in the Exchequer, "and so the question might have been brought to a judicial deci-

"sion. It was done in the case of Scott *qui tam v.* Schwartz, "Com. 677, cited in the argument. By the way, I do not under-

"stand upon what ground the case of Butler was distinguished "from Collet's case, unless Butler has been expressly discharged "from his allegiance by Act of Parliament, in consequence of our "acknowledgment of the independence of the United States. "They were both natural-born subjects, they were both adopted "subjects of the United States, and it is to be said of both *Nemo "patriam in qua natus est exuere, nec legeantiae debitum ejurare "possit.* It was observed by Lord Hale, that a natural-born sub-

"ject of this country may by foreign naturalisation entangle himself "in difficulties and a conflict of duties. So may the naturalized or "denizen subject of the King of Great Britain. Yet it is clear "that we and all the civilized nations and States of Europe do "adopt (each according to their own laws) the natural-born sub-

"jects of other countries. So, as I take it, Vattel puts it in the "passages referred to. Our laws give certain privileges and with-

"hold certain privileges from our adopted subjects, and we may "naturally conclude that there may be some qualification of the "privilege in the laws of other countries. But our resident "denizens are entitled, as I take it, to all sorts of commercial pri-
"Vileges which our natural-born subjects can claim. We should consider them as English in the language of the Navigation Act. The United States do undoubtedly consider their adopted subjects as subjects of the United States within their laws. And I take it that we should consider their adopted subjects, if they happen not to be natural-born subjects of the King of Great Britain, as subjects of the United States within our navigation laws. To this proposition I take the case of Scott v. Schwartz to be in point, if it wanted an authority. The case now begins to work itself clear. It comes to this question: what difference does the circumstance of the adopted subject of the United States being a natural-born subject of the King of Great Britain make? Is there any general principle in the law of nations (out of which this adoption of subjects seems to have grown) that in the parent State the adopted subject is incapable of enjoying the privileges which have been conceded by the parent State to the other subjects of that State which has adopted him? I know of no such disabling principle. Let us, then, come to our own municipal law. Lord Hale says foreign naturalisation may involve the natural-born subject in a conflict of duties. This is eloquence, but not precision. What are the duties of which there may be a conflict? Our laws pronounce that if there should be war between his parent State and the State which has adopted him, he must not arm himself against the parent State. Perhaps they go further and say that if he is here he may be prevented from returning to his domicile in the State which has adopted him: that if he is there, he must, on receiving the King’s commands under his privy seal, return hither on pain of incurring a contempt and penalties consequent upon it. Whether the proclamation which has been introduced into this case will have the same effect as a privy seal served upon the party, is a question not necessary to be here discussed. It cannot have a greater effect, nor an effect of a different nature, and may therefore be laid out of the case. Our municipal laws may attach upon him in some other cases, but I conclude in no instance which by analogy can govern the present case, because I have heard of no such argument from analogy. Upon what authority, then, is it said that a natural-born subject of the King of Great Britain shall not trade to the East Indies, though he is an adopted subject of another country whose subjects in general are allowed to trade to the East Indies? Shall it be enough to say the rest of the King’s subjects are not allowed to trade to the East Indies, and therefore you, being the King’s subject, shall not? He will answer, I have a privilege which the rest of the King’s subjects have not. I am the King’s subject, but I am also the subject of the United States, and Great Britain has granted to the subjects of the United States that they may trade. He may add, I violated no
"law of my parent State in procuring myself to be received a
subject of the United States. She encourages the practice, for
she herself adopts the subjects of other States. Why then are
the fruits of my adoption to be withheld from me? If it be said
to him, You, a British subject, ought not to trade to the loss and
injury of the East India Company, who have a monopoly, he
may say, The subjects of the United States may and ought to
carry on this trade under the authority of the laws of this
country—under the authority of the same laws which gave to the
East India Company their monopoly. If the Company sustain
a loss, it is damnnum sine injuria. In short, it being once
granted that a natural-born subject of the King of Great Britain
may become a subject of the United States, there can be no
breach of moral, political, or legal duties, no conflict of duties
in claiming or exercising the privileges which belong to that
character. The same train of reasoning, in my judgment, goes
to prove that it is not yet sufficiently established to be now taken
for clear law upon the ground of which we ought to declare
these contracts void, that a natural-born subject of the King
naturalized or otherwise adopted as a subject by a foreign State,
is not to be considered within our navigation laws as a subject
of that foreign State when acting in the character of the master
of a vessel belonging to the subjects of that foreign State. Such
a man is certainly, to many purposes, 'of that country or place,'
which are the words of the Navigation Act, and 'a subject of
the United States,' which are the words of the stat. 37 Geo. III.
c. 97. In point of title to this character of subject, he is suffi-
ciently so within our navigation laws. I mean that he is suffi-
ciently adopted, according to the case in Comyns, to be considered
a subject of that country within our navigation laws, supposing
his claim not to be repelled by his being a natural-born subject
of Great Britain. I am not prepared to say, highly as I respect
the authority of those who held that opinion, that this character
of natural-born subject will control or suspend the legal operation
of that of a subject of the United States. There is here no con-
flict of duties. Both characters may stand together; and if some
political inconveniences, such as those suggested in the argument
before us (though they seem very remote), should follow, yet if
these inconveniences are not of consequence enough to prevent
the practice of the adoption of subjects by Great Britain and
every other State in Europe, we cannot satisfy ourselves that they
ought to control the legal consequences of that adoption. We
are of opinion that there is no error in this judgment, and that it
ought to be affirmed.'

"Judgment affirmed" (d).

(d) Mr. Justice Buller was absent from the 20th, and Mr. Justice
Heath from the 24th of April to the end of the term, from indisposition.
APPENDIX V.

No. 4.

THE JONGE JOSIAS (e).

"This was a Danish ship, which with several others had been seized by Admiral Berkley, in the Tagus, on the 24th of February, 1809, and sent to England for adjudication. In the first instance a claim of territory had been advanced by the Portuguese Consul, but that was withdrawn, and the question now arose upon a claim which had been given in on behalf of the master for three eighth parts of the ship, his property, as protected under the XVth Article of the Convention of Cintra. The article provides 'that all subjects of France, or of Powers in friendship or alliance with France, domiciliated in Portugal, or accidentally in the country, shall be protected; their property, of every kind, moveable and immovable, shall be respected; and they shall be at liberty either to accompany the French army or to remain in Portugal. In either case their property is guaranteed to them, with the liberty of retaining or of disposing of it, and of passing the produce of the sale thereof into France, or any other country where they may fix their residence, the space of one year being allowed them for that purpose. It is fully understood that shipping is excepted from this arrangement, only, however, in so far as regards leaving the port, and that none of the stipulations above mentioned can be made the pretext of any commercial speculation.' It was stated in the claim that the ship entered the port of Lisbon some time in August 1807, prior to the declaration of hostilities on the part of England against Denmark, and also prior to the occupation of Lisbon by the French, and that she remained there unmolested until she was seized by Admiral Berkley.

"On behalf of the Claimants.—A letter from Admiral Cotton, who commanded off the Tagus in August 1808, was relied on to show that he had not acted against these vessels after, or in consequence of the Convention of Cintra; and it was contended generally, that as these Danish masters were the subjects of a Power in amity with France, and accidentally in the country, they came fairly within the simple construction of the Treaty, and were entitled to protection under it so long as they remained in port. That the only exception with respect to shipping related to their quitting the port, and that it was clear, from the exception itself, that property of that description was within the intent and meaning of the contracting parties.

"For the Captors.—It was urged that the proviso as to shipping must be taken with reference to the context, and could have

(c) 1 Edwards' Admiralty Reports, 128-134.
APPENDIX V.

"this meaning only; that if any persons included in the preceding "part of the article happened to be possessed of any property in "shipping, the protection should also extend to that description "of their property. That the article evidently referred to such "persons as were adherents to the French cause in Portugal, and "not to persons going there on other grounds and with other "views. That the permission to dispose of the property, and to "pass the proceeds into France, or any other country where they "might fix their residence, showed that the article was not intended "to apply to this description of persons. That it was an interpre-
tation sufficiently large to admit that it extended to all persons "holding connection with the French during the time they were "in possession of the country, and could not be extended to cases "not in the contemplation of the contracting parties, nor within "the sound interpretation of the words employed in the instrument "which they had constructed.

"JUDGMENT.

"Sir William Scott.—I am called upon to decide this question, "and every consideration of public policy and of tenderness for the "parties interested, makes it proper for me not to delay giving the "opinion of the Court upon the legality of the claim, which has "been submitted to its consideration. In the first instance, a claim "was given by the Portuguese Government for these vessels, as "having been taken in violation of the territorial rights of that "nation. But it has been withdrawn, and consequently there is "an end of any protection which these Danes can derive from a "pretension so introduced, it being an established law that the claim "of territorial right can be advanced only by those to whom the "territory belongs; the subjects of other States can do no more than "refer themselves for redress to the neutral Power under whose "rights they hoped to find protection. The parties, however, have "set up a claim under the stipulations of the Convention of Cintra, "which, it is assumed, are applicable to the property of these "Danish masters of vessels. Now I think there is a question pre-
liminary even to this, namely, whether the stipulations of a "Treaty can be set up by those who were not parties to it. The "French, who were parties to the Treaty, might undoubtedly, "though they are enemies, contend for that construction which "they might allege was in the intent and meaning of the con-
tracting parties at the time, and they have a right to demand "the application of the Treaty so construed, to those persons on "whom they meant to confer protection. But whether others who "have no rights as parties to that Treaty, but who are indirectly "benefited by it, are competent to contend for its fulfilment, is, I "think, more than doubtful. Taking it, however, that these Danish "masters are competent to claim under the Treaty, the question
then is, whether the construction here contended for is that which the Court would be warranted in adopting. For although the Court might be disposed to put a favourable interpretation upon the articles of the Treaty, it is bound to construe them according to their natural and fair meaning, and not to impose upon the contracting parties stipulations which were never in their contemplation. The business of the Court is to expound and explain, not to frame original Treaties. Now it is a feature of the Convention of Cintra, very illustrative of its real character, that it is a Treaty for the military evacuation of Portugal by the French army, and that the parties to it are the commanders of the respective armies. That is a circumstance which impresses a strong conviction that this Treaty has no direct reference to maritime interests, and ought not to receive such an application, unless it is distinctly expressed. If there are any articles pointing to the immunity of these vessels, the Court would be inclined to give them full effect, and not to construe them with a punctilious hesitation and scrupulosity, respecting the competence of the authority under which they were framed. But in general, the fact that it was drawn up by military persons, and for great military purposes, does give the Treaty a character which is useful as expository of its true meaning. The maritime department was separate and distinct, and under a distinct authority; unless, therefore, there are articles that do expressly point to maritime objects, it is reasonable to conclude that they were not in the contemplation of the parties themselves. Taking that as a fair rule of exposition, I am to consider the effect of the XVIth Article of the Treaty, as applied to the claims of the masters of these Danish vessels, which were lying in the Tagus at the time; and it would certainly be a singular circumstance if the French generals had stipulated for the protection of the property of these persons who happened to be upon the spot, amounting only to a small part of the vessels, without making any provision for the remaining parts of those vessels, which were equally the property of the allies of France, though not personally in Portugal at that time. The words of the article are these, 'that the property of persons domiciliated, or accidentally in the country, shall be protected;' and under this description it is said, that these persons are to be considered as being accidentally in the country, and that therefore they come within the provisions of this article. The words are certainly large, but I must again refer to what I before observed, that this is a Treaty applicable to military affairs, to the exclusion of every object of maritime policy. Under the terms 'domiciliated,' these Danish masters certainly do not come; do they then under the other description of persons 'accidentally in the country?' If these words stood alone, with the strong disposition I feel to give them the most favourable construction, I
APPENDIX V.

"should, though not perhaps without doing some violence to their "meaning, be inclined to hold that these persons, being on board "their ships in the port of Lisbon, might be included under the "terms 'accidentally in the country.' I should under that dispo-"sition be inclined to hold that the word 'accidentally' applied to "all persons in a situation contra-distinguished from domiciliated, "though perhaps more immediately to persons attending on the "armies, or on visits, or residing there for the purposes of business, "pleasure, or curiosity. It would require, however, all the indule-"gence, which I admit the personal circumstances of the case "call for, to include under the description masters of ships coming "merely to the port, and not to the country. But when I look to "the context, I think it results in the clearest manner, that the "words never were intended to convey such a meaning; for how "does the article go on? 'That they shall be at liberty to remain "in Portugal, or to accompany the French army.' That is the "alternative: now what kind of option is this, what prospect does "the permission to accompany the French army, or to remain in "Portugal, hold out to these Danish masters? They could only "remain by giving up their vessels and their employment; and "as to following the French army, it is quite ridiculous when "applied to persons so circumstanced. The article then goes on in "the same strain, 'that they shall be protected, and may be at "liberty to transfer themselves to France, or any other country, in "which they may wish to fix a residence.' Now these are persons "who have a fixed residence already in their own country; they "have no wish to remove to France, which is entirely out of all "contemplation with them, or to any other country but their own; "they have no intention of disposing of their shares in these vessels, "still less of remaining in Portugal. Neither the one nor the other "of these alternatives can, without a ridiculous perversion of the "terms, be applied to these persons, or to the property of masters "of vessels, who come to the port only to go back again, and it is "evident that they were wholly out of the view of the contracting "parties. Then follow the words 'shipping is included' in this "article, which has very justly been described as clouded in some "of that obscurity which hangs over no small portion of this Treaty. "But I do not understand those words as enlarging the description "of persons meant to be benefited. The interpretation which I "put upon the words is this: there are a great number of foreign "merchants residing at Lisbon, many of whom are possessed of "shipping, and the ships of such persons who are themselves pro-"tected by the preceding part of the article to which these words "must refer, are to be protected also; it being stipulated that if "they send the ships out to sea, they shall 'not carry off their pro-"perty without being under the view of those who have a right to "guard against any abuse of the indulgence.' Under these con-
"siderations, and not without considerable pain, I feel myself bound "to construe the Treaty in a manner unfavourable to the claimants, "and to hold that it does not extend to the protection of their pro-"perty in these vessels, which I am satisfied was not within the "view of the persons who framed the Convention. There are "circumstances in the case which entitle this unfortunate class "of men to the utmost indulgence from those who may be ulti-"mately benefited; but at present it is my public duty to pronounce "that their property in these vessels is not protected under the "Treaty."

No. 5.

**SUTTON v. SUTTON** *(f)*.

July 29th, 1830.

Under the Treaty of 1794, be- "between Great Britain and America, and the Act of the 37 Geo. 3. c. 97, American citizens who held lands in Great Britain on the 28th of October, 1795, and their heirs and as- "signs, are at all times to be con- "sidered, so far as re- "gard these lands, not as aliens, but as native sub- "jects of Great Britain.

"This was a bill for the specific performance of a contract; and "the Master having reported against the title, an exception was "taken to his report, which now came on to be argued. "The title of the vendor was derived under a conveyance from "a citizen of America; and the question was, whether, under the "circumstances of this case, and in relation to the property which "was the subject of the contract, an American citizen was to be "deemed an alien? "Samuel Strudwick, before and at the time of the separation of "the United States of North America from Great Britain, was "settled in North Carolina, and he continued to reside there, as an "American citizen, till his death in 1794. By his will, dated in "that year, he devised to 'his good friend Margery, widow of "Stephen ——-, lately living at Fulham in England, his houses "and lands in the city of London, in trust to be sold, when Mr. "Vaughan's annuity shall drop in, and the monies arising from "such sale to be employed as therein mentioned; ' and, after be- "queathing two small annuities, he gave the residue of his real and "personal estate to his son William Francis Strudwick. A part of "this testator's property consisted of an undivided share of certain "tenements in the city of London, which were the subject of the "present suit. A person of the name of Margery Bouget was "considered to be the devisee referred to in the will: she declined "to carry the trust into effect, or to interfere in the management of "the property, and was said to have died about the year 1806. "William Francis Strudwick, the heir-at-law and devisee of "Samuel, was an American citizen, and died intestate in the year "1810, leaving Samuel Strudwick, also an American citizen, his "eldest son and heir-at-law. In 1819, the last-mentioned Samuel

*(f)* 1 *Russell & Mylne's Reports*, 663.
APPENDIX V.

"Strudwick sold and conveyed his undivided share of the tenements in the city of London; and upon this conveyance the title of the vendor depended.

"One of the objections taken to the title was in the following words:—'That Samuel Strudwick, the vendor, in 1819, of two eighth parts of the estate, was an alien, and incapable of conveying them, such shares having been the property of Samuel Strudwick, his grandfather, who was settled in America at the time of the separation of the two countries in 1783, and who was alleged to have devised them to his son William Francis Strudwick, who was an American, and died there in 1810 intestate, leaving the said Samuel Strudwick, the grandson, his heir-at-law; and that no proof had been shown that, after the separation, Samuel Strudwick, the grandfather, or William Francis Strudwick, was a subject of the King of Great Britain.'

"The question turned upon the construction of the Treaty of Peace between Great Britain and the United States, signed at London, on the 19th of November, 1794, and of the 37 Geo. III. c. 97, which was passed for the purpose of carrying the Treaty into execution.

"By the first article of that Treaty it was agreed, that there should be a firm, inviolable, and universal peace between Great Britain and the United States.'

"The second article, after some regulations relative to the withdrawal of the British troops, declared, that the settlers and traders within the precincts of the posts from which the British troops were to be withdrawn, should continue to enjoy their property of every kind, and be at liberty to remain there, or to remove their effects, and to sell or retain their lands and property at their discretion; that such of them as should continue to reside within the boundary line should not be compelled to become citizens of the United States, or to take any oath of allegiance to the Government thereof, but should be at full liberty so to do if they thought proper, and should declare their election within one year after the evacuation aforesaid; and that all persons who should continue there after the expiration of the year, without having declared their intention of remaining subjects of His British Majesty, should be considered as having elected to become citizens of the States.'

"The third, fourth, and fifth articles related to the boundaries of the new States, the navigation of the rivers, &c.; and the sixth, seventh, and eighth, to the adjustment of the pecuniary claims of individuals.

"The ninth article enabled the subjects of either country to hold lands in the other, and to sell and devise them as if they were natives. The terms of it, relative to Americans holding lands in England, were, that American citizens, who then held lands in
the dominions of His Majesty, should continue to hold them according to the nature and tenure of their respective estates and titles therein, and might grant, sell, or devise the same to those whom they should please, in like manner as if they were natives; and that neither they, nor their heirs or assigns, should, so far as might respect the said lands and the legal remedies incident thereto, be regarded as aliens.'

"And by the tenth article it was stipulated, 'that neither debts due from individuals of the one nation to the individuals of the other, nor shares nor monies which they might have in the public funds or private banks, shall, even in any event of war or national differences, be sequestrated or confiscated; it being unjust and impolitic that debts and engagements contracted and made by individuals having confidence in each other, and in their respective Governments, shall ever be destroyed or impaired by national authority, on account of national differences and discontents.'

"The subsequent articles of the Treaty, down to the twenty-eighth, contained various stipulations relative to navigation, and the mutual delivery up to justice of persons charged with murder or forgery. The twenty-eighth article declared, 'that the first ten articles of the Treaty should be permanent, and that the subsequent articles, except the twelfth' (which related to the intercourse with the West Indies, and was to continue in force for two years after the then war), 'should be limited in their duration to twelve years, to be computed from the day on which the ratifications of the Treaty should be exchanged, subject to the renewal of the negotiations at a period therein mentioned; but if His Majesty and the United States should not be able to agree on a new arrangement, in that case all the articles of the Treaty, except the first ten, should then cease and expire together.'

"In 1797, the 37 Geo. III. c. 97 was passed, which is intituled, "An Act for carrying into execution the Treaty of Amity, Commerce, and Navigation, concluded between His Majesty and the United States of America." It contained the following clauses:—

" 'Sect. 24. And whereas by the ninth article of the said Treaty, it was agreed that British subjects who then held lands in the territories of the said United States, and American citizens who then held lands in the dominions of His Majesty, should continue to hold them according to the nature and tenure of their respective states and titles therein, and might grant, sell, or devise the same to whom they should please, in like manner as if they were natives; and that neither they nor their heirs or assigns should, so far as might respect the said lands and the legal remedies incident thereto, be regarded as aliens: be it therefore enacted, by the authority aforesaid, that all lands, tenements, and hereditaments in the kingdom of Great Britain, or the territories and dependencies thereto belonging, which, on the said 28th of
APPENDIX V.

"October, 1795 (being the day of the exchange of the ratifications of the said Treaty between His Majesty and the said United States), were held by American citizens, shall be held and enjoyed, granted, sold, and devised, according to the stipulations and agreements contained in the said article; any law, custom, or usage to the contrary notwithstanding.

"'Sect. 25. Provided always, that nothing herein contained shall extend, or be construed to extend, to give any right, title, or privilege to any person, not being a natural-born subject of this realm, which such person would not have been entitled to if this Act had not been made, other than and except such rights, titles, and privileges as shall be necessary for the true and faithful performance of the stipulations in the said article contained, according to the true intent and meaning thereof, or to give to any person, not being either a natural-born subject of this realm, or a citizen of the said United States, any right, title, or privilege to which such person would not have been entitled if this Act had not been made.

"'Sect. 27. That this Act shall continue in force so long as the said Treaty between His Majesty and the United States of America shall continue in force, and no longer.'

"This Act was continued by the 45 Geo. III. c. 35, which, after reciting that the 37 Geo. III. c. 97 'was to continue in force so long as the said Treaty should continue in force, and no longer, which Treaty, or so much of it as relates to the matters contained in the said Act, has now ceased and determined: and it is expedient that the liberty of navigation and commerce between the people of this kingdom and the people of the United States of America should continue for a limited time, in the same manner and under the same limitations and conditions as are specified in the said Act,'—enacted that 'the said Act, and everything therein contained, shall, notwithstanding the said Treaty has ceased and determined, be deemed and taken to be and to have been in full force and effect, and shall so continue in force until the 1st of June, 1806.'

"The 37 Geo. III. c. 97 was subsequently continued from time to time by the 46 Geo. III. c. 16, the 47 Geo. III. sess. 2, c. 2, and, finally, by the 48 Geo. III. c. 6., to the end of the then present session of Parliament. That session terminated in the same year; and no Act was afterwards passed to revive or prolong the operation of the Treaty.

"The point argued was, whether the twenty-fourth section of the 37 Geo. III. c. 97, taken in connection with the ninth article of the Treaty, continued in operation, so as to remove the incapacity of holding and transmitting lands in England, which would otherwise have attached on William Francis Strudwick and Samuel Strudwick, the grandchildren, as aliens.

VOL. II.
"Mr. Bickersteth, Mr. Pemberton, Mr. Tyrrel, Mr. Wright, and
Mr. Wood in support of the objection to the title.
"The Treaty of 1783 dissolved the tie of allegiance which had
previously subsisted between the Crown of England and the in-
dividuals who then became American citizens; they and their
descendants, born out of the British dominions, were thenceforth
aliens; and, accordingly, Doe v. Acklam (g) has established
that a person born in the United States since 1783 cannot in-
William Francis Strudwick, and Samuel Strudwick, the grandson,
were clearly aliens. The only distinction between the present
case and that of Doe v. Acklam is, that the frehold of the tene-
ment in question was not in an English subject on the 28th of
October, 1795, but in an American citizen. Now it is true that,
as to such lands, the incapacity of alienage was removed by the
37 Geo. III. c. 97; and so long as that statute was in operation,
American citizens might hold, grant, sell, or devise these lands
in the same manner as if they were natives. But by the twenty-
seventh section the Act is to continue in force only so long as
the Treaty shall be in force, and no longer; and the single
question therefore is, whether the Treaty was or was not in force
in 1819. On this point we have a legislative declaration in 1805.
The 45 Geo. III. c. 35 says in the preamble, 'which Treaty, or
so much of it as relates to the matters contained in the said Act
(i.e. the 37 Geo. III. c. 97) has now ceased and determined;
and among the matters contained in the said Act was the stipu-
lation for excluding the incapacity arising from alienage; and
the same statute declares, in the enacting clause, that 'the said
Treaty has ceased and determined.' By that statute, and two
subsequent Acts, the 37 Geo. III. was revived, both retrospec-
tively and prospectively; but it finally expired with the session
of 1808. In 1812 war broke out between the two countries,
which continued to rage till a new Treaty was concluded in
1814. It is impossible to suggest that the Treaty was 'continu-
ing in force' in 1813; it necessarily ceased with the commence-
ment of the war. The 37 Geo. III. c. 97 could not continue in
operation a moment longer, without violating the plainest words
of the Act. William Francis Strudwick became then and remained
ever afterwards subject to all the incapacities of alienage.
"It was said before the Master, that the first ten articles of the
Treaty were to be 'permanent,' which was construed as synony-
mos with 'perpetual;' but that is a construction which the
twenty-eighth article does not admit of. The very first article is,

(g) 2 B. & C. 779.
(h) 5 B. & C. 771.
"that there should be a firm and universal peace between Great Britain and the United States;' that is the first of the articles supposed to be ever-enduring. Yet, what became of it in 1813? There are many of the stipulations of the first ten articles which could not possibly be observed in a state of war. The word 'permanent' is used, not as synonymous with 'perpetual or everlasting,' but in opposition to a period of duration expressly limited. The greater number of the articles of the Treaty were to cease at the expiration of twelve years; the first ten were not to expire then, by the mere lapse of time; they were to continue so long as a Treaty of peace was in force; but when war took the place of peace, and the Treaty had no longer any existence, the ninth article could not continue in operation.

"Even if it were to be held, in consequence of the language of the twenty-eighth article, that the intention of the framers of the Treaty was to make the ninth article perpetual, there is nothing in the Act of Parliament to give it that endurance. The Act makes no mention of the twenty-eighth article of the Treaty, which remains, therefore, a mere stipulation of the Crown, and cannot create or extend an exemption from any disability imposed by the law of the land. The continuance of the exemption could not be prolonged beyond the duration of the Act: the Act was to endure only so long as 'this Treaty,' that is, the treaty of amity, commerce, and navigation concluded between His Majesty and the United States of North America, should be in force; and, most unquestionably, that Treaty was not in force when His Majesty and the United States were carrying on hostilities against each other both by sea and land.

"The construction contended for on the other side would lead to most inconvenient results. One consequence of it would be, that all the lands which, on the 28th October, 1795, belonged to Americans, are taken for ever out of the operation of the general law of England, and may, in all time to come, be transmitted to aliens by descent, devise, or conveyance.

"Mr. Wigram, in support of the same line of argument, submitted that the Treaty could not be deemed to be in force, unless it was in force as a whole; that it could not be in force as a whole after the most important provisions in it had been broken; and, on the contrary, that it ceased to be in force as a whole when the peace, the stipulation for which constituted the basis of the arrangement, was exchanged for a state of war. He cited Vattel (i)—We cannot consider the several articles of the same Treaty as so many particular and independent Treaties; for, though we do not see the immediate connection between every

(i) Book ii. c. 13, s. 202.
"one of these articles, they are all connected by this common relation, that the Contracting Powers pass them with a view to each other, by way of compensation. I should never, perhaps, have passed this article, if my ally had not granted me another, which, in its own nature, has no relation to it. Everything comprehended in the same Treaty has then the force and nature of reciprocal promises, at least if they are not excepted in due form. Grotius says, very well, that all the articles of a Treaty have the force of conditions, which by a default are rendered null."

"Mr. Preston and Mr. Dixon, Mr. Tinney and Mr. Garratt, in support of the title.

"The Treaty contains articles of two different descriptions; some of them being temporary, and others of them being intended to be of perpetual obligation. Of those which were temporary, some were to last for a limited period; such as the various regulations concerning trade and navigation; and some were to continue so long as peace subsisted, but being inconsistent with a state of war, would necessarily expire with the commencement of hostilities. There were other stipulations, which were to remain in force in all time to come, unaffected by the contingency of peace or war. For instance, there are clauses for fixing the boundaries of the United States. Were the boundaries so fixed to cease to be the boundaries the moment that hostilities broke out? The tenth article provides that debts due to individuals, and moneys which they may have in the public funds or private banks shall not be confiscated in the event of war: that is a stipulation which, from the nature of things, as well as from the plain import of the terms, was to be a binding obligation in war as well as peace; for it was only to a state of war that it was at all applicable; and, in sound construction, a similar force must be given to the immediately preceding article, on which the present question arises. It was intended to provide for the inconvenience which must naturally arise from the division of one empire into two independent States, the subjects of each of which hold property situated within the territorial limits of the other; and with that view, it declares that American citizens, who then held lands within the dominions of His Majesty, should continue to hold them, and have power to grant, sell, or devise them as if they were natives, and that neither they, nor their heirs or assigns, should, in respect of their lands, be regarded as aliens. The effect of it is to exclude, and to exclude for ever, the principle of alienage as to certain persons and certain lands: there is no limitation to its operation; it is not confined to a state of peace, or to the individuals who then held the lands; it includes their heirs and assigns: they, their heirs and assigns, are, with respect to such lands, to be considered as natives; and, being considered as natives, their title to hold the lands could not be affected by
"the breaking out of war between the two countries. The twenty-
fourth article tends still further to show that some of the stipu-
lations, and among these the ninth article, were meant to be of 
perpetual endurance.
"Now the effect of the twenty-fourth section of the Act of 
Parliament is to give the force of law to the ninth article of the 
Treaty; and if that article, according to the sound construction 
of the Treaty, was to be of perpetual obligation, the enactment 
of the legislature, carrying into effect that which the King had 
agreed to do, but which his prerogative was not competent 
to accomplish, has declared that Americans who held lands 
within the dominions of His Majesty on the 28th of October, 
1795, their heirs and assigns, shall in all time to come hold and 
"enjoy them as natives. It is true that the twenty-seventh section 
"has said that the Act shall continue in force only so long as the 
"Treaty of peace continues in force; but that section must 
necessarily be confined to those stipulations which were either of 
limited duration, or were in their nature such as to be entirely 
dependent on the existence of peace.
"It has been argued that the recitals contained in the 45 Geo. III. 
c. 35, and the two subsequent Acts, have put a legislative con-
struction on the 37 Geo. III. c. 95, and have declared that the 
Treaty, and consequently the latter Act, had ceased and deter-
mind. But the operation of a statute is not to be restrained by 
the recital of a subsequent statute. Dore v. Gray (k). Besides, 
the Acts of the 45 Geo. III. and the following years contemplated 
only those provisions of the Treaty which related to commerce and 
navigation, and were to expire at the end of twelve years, unless 
they were expressly renewed for a further period.
"The ninth article was more beneficial to English subjects than 
to American citizens; and any restriction of its fair operation 
would be a public mischief, inasmuch as it would naturally lead 
America to adopt a similar restriction of the reciprocal privilege 
granted to subjects of the British Crown.
"Suppose that an American citizen who, on the 28th October, 
1795, held lands in England, died, leaving an elder son born in 
America, and a younger son born in England. Had the Treaty 
and the Act not been made, the younger son, on the father’s 
death, would have inherited the lands: under the Treaty and the 
Act the eldest son was heir, and as such entitled to the property. 
Is it to be said that, if a war afterwards break out, his interest is 
to cease, and a title is to accrue to the Crown, which never could 
have had a pretext of claim if the devolution of the property had 
been regulated by the Common Law?

(k) 2 T. R. 365.
“Mr. Bickersteth, in reply.

"The Master of the Rolls.

"The relations which had subsisted between Great Britain and America, when they formed one empire, led to the introduction of the ninth section of the Treaty of 1794, and made it highly reasonable that the subjects of the two parts of the divided empire should, notwithstanding the separation, be protected in the mutual enjoyment of their landed property; and the privileges of natives being reciprocally given, not only to the actual possessors of lands, but to their heirs and assigns, it is a reasonable construction that it was the intention of the Treaty that the operation of the Treaty should be permanent, and not depend upon the continuance of a state of peace.

"The Act of the 37 Geo. III. gives full effect to this article of the Treaty in the strongest and clearest terms; and if it be, as I consider it, the true construction of this article, that it was to be permanent, and independent of a state of peace or war, then the Act of Parliament must be held, in the twenty-fourth section, to declare this permanency; and when a subsequent section provides that the Act is to continue in force so long only as a state of peace shall subsist, it cannot be construed to be directly repugnant and opposed to the twenty-fourth section, but is to be understood as referring to such provisions of the Act only as would in their nature depend upon a state of peace.

"I am of opinion, therefore, in favour of the title, and consider that the heirs and assigns of every American who held lands in Great Britain at the time mentioned in the Act of the 37 Geo. III. are, as far as regards these lands, to be treated, not as aliens, but as native subjects."

No. 6.

MALTASS V. MALTASS (I).

Judgment by Dr. Lushington.

... Assuming, therefore, that the deceased died domiciled at Smyrna, the first point is,—what is the law of Turkey as to British subjects dying domiciled there? This depends on the construction to be put on the Treaties between Great Britain and the Porte. The leading object of these was to protect British subjects trading to Smyrna, and, with this view, to modify the law of Turkey so as to ensure them justice, so far as could be attained. It is, I think, perfectly clear, from the Treaty, inde-

(I) Robertson's Ecclesiastical Reports, pp. 70-81.
See also, 3 Curteis, 231.
APPENDIX V.

"Pendent of all historical facts, that a residence in Smyrna by a
"British merchant was contemplated, and, if the contracting parties
"have provided for the case of residence, it seems necessarily to
"follow, that they must have intended to provide for the case of
"domicil, if domicil in Turkey could be acquired by the same
"means as in other countries. Judge Story says:—"That place
"is properly the domicil of a person in which his habitation is
"fixed without any present intention of removing therefrom.' If
"this be applicable to a domicil in Turkey, such a case must have
"occurred in the course of trade; and, therefore, I conceive it
"must, in legal contemplation, have been included when the parts
"of the Treaty applicable to British subjects trading in Turkey
"came to be considered. I the more incline to this opinion,
because, however short might have been the residence of British
"merchants in Turkey in the earliest times, the fact of their per-
"manent residence for many years is undoubted, and some of the
"Treaties bear date long after such permanent residence existed.
"It never could, I think, be supposed that the Treaties did not in-
tend to protect British merchants, either composing a house of
"trade, or carrying on business singly, who for years together
"resided in Smyrna, having no other habitation, and without any
"intention of quitting Smyrna, or, in other words, domiciled accord-
ing to Judge Story's definition.

"If it be contended, that, at the time of concluding the Treaties,
"neither party thought of British subjects domiciled in Smyrna,
"that may perhaps be true, for little indeed was known or thought
"of domicil, in the legal sense of the term, in those early times;
"but if the words of the Treaty are sufficient to cover the case, and
"if the object of the Treaties was to apply to all British merchants,
"then the application to a state of circumstances not particularly
"contemplated, but within the general scope of the Treaties, would
"not limit their construction. It would not be a casus omisssus,
"but simply the use of general terms to attain a particular object,
"the particular circumstances which should call the compact into
"action not being foreseen; but the general forms intended to
"govern all cases falling within the principle, whether seen or not
"seen. It appears to me that the passages in the Treaties which I
"shall presently cite are so wide in their terms as to comprise all
"British merchants resident in Smyrna, and that the only exception
"(which proves the universality,) is the case of a British subject
"becoming a Mussulman.

"Perhaps, also, there may be another reason why words dis-
"tinctly appropriate to domicil were not used; namely, both parties
"considered domicil in that sense all but impossible, because the
"sense they would have attributed to it would be a total aband-
"onment of British character. The reasons why they may have so
"thought I will presently shortly discuss.
"I think, before I close this branch of my subject, that there are arguments of no small weight leading to this construction of the Treaties. Even at this day, although so many powerful minds have been applied to the question, there is no universally-agreed definition of the word domicil—no agreed enumeration of the ingredients which constitute domicil. This is expressed in the following remarkable language by Hertius: 'Verum in iis finiendis mirum est quam sudant Doctores' (m). Indeed, I think there are no less than fourteen or fifteen different definitions of this word. The gradation from residence to domicil consists both of circumstances and intention; nice distinctions have and must prevail, such as cannot be defined beforehand. Hence, if the Treaties did not apply to domicil, as residence would often become fused into domicil, British merchants, and, in case of their deaths, their families, would find themselves suddenly, and contrary to their intention, and to the presumption of intention, subject to a code of laws wholly contrary to their religious persuasions, their feelings, customs, and contemplation in making arrangements for the welfare of themselves and families; and, be it observed, the law of Turkey would come into operation (if residence became domicil), not only on property after death, but during the life; and an individual might be living in Turkey out of the protection of any Treaty. I know not what would be (if the case were capable of arising) the law of Turkey applicable to British merchants so domiciled, but certainly entire subjection to Turkish laws would be a grievous evil to British merchants of Christian belief, education, and habits.

All these reasons appear to me to operate most strongly in favour of a liberal and extended construction of the Treaties; in my opinion the contracting parties never contemplated the anomaly which a contrary construction would lead to.

With regard, then, to the parts of the Treaties applicable to the question we are now discussing, to wit, whether the Treaties extend to a permanent residence, and not merely to a temporary visit. The Treaties commence at an early period, but they are all included in the Treaty of the Dardanelles (1809). Now, in the construction of treaties of this description, we cannot expect to find the same nicety of strict definition as in modern documents, such as deeds, or Acts of Parliament; it has never been the habit of those engaged in diplomacy to use legal accuracy, but rather to adopt more liberal terms. I think, in construing these Treaties, we ought to look at all the historical circumstances attending them, in order to ascertain what was the true intention of the contracting parties, and to give the widest scope to the

(m) 1 Hertius, Oper. s. 4, n. 3, p. 120. (edit. 1716).
language of the Treaties, in order to embrace within it all the objects intended to be included.

The first begins by stating 'that there had existed a good understanding and an amity between the King of England (Charles II.) and the Porte. And it was granted to him (Charles II.) that his subjects and their interpreters might safely and securely trade in these our dominions.' The first article stipulates: 'that the English nation and merchants, and all other merchants sailing under the English flag, with their ships and vessels, and merchandize of all descriptions, shall and may pass safely by sea, and go and come into our dominions, without any the least prejudice or molestation being given to their persons, property, or effects, by any person whatever.'

At this period one of the objects to be attained was not simply permission to carry on trade, but protection from the Turkish corsairs and pirates of that country, and that not merely confined to English merchants, but extended to all those who should accept the guarantee of the English flag.

Let us look to another part of the Treaty. The fifteenth article says: 'all Englishmen and subjects of England, who shall dwell or reside in our dominions, whether they be married or single, artizan or merchants, shall be exempt from all tribute.' These words 'dwell or reside' clearly contemplate not a temporary but a permanent residence. I think also that the reference to 'married persons' indicates the same intention, for the residence of persons in that state is generally looked at as of a more permanent and fixed character than that of mere ordinary traders.

Then it goes on to provide for the establishment of consuls in the different ports, and 'that any dispute between the English themselves shall be decided by their own ambassador or consul;' so that the Treaty contemplates a residence under the protection of national consuls.

Now I do not intend to go through the Treaty in detail: the sixteenth and eighteenth articles relate generally to the privileges granted to English subjects perfectly distinct from resident Turkish subjects. The twenty-sixth article provides: 'that in case any Englishman or other person subject to that nation, or navigating under its flag, shall happen to die in our sacred dominions, our fiscal and other officers shall not, upon pretence of its not being known to whom the property belongs, interpose any opposition or violence, by taking or seizing the effects that may be found at his death, but they shall be delivered up to such Englishman, whoever he may be, to whom the deceased may have left them by will.' This then, in my opinion, it is perfectly clear, must refer to a will made according to the law of England, for I am not aware of any power of testacy by the law of Turkey. The article goes on: 'and if he shall have died
"intestate (this means intestate by the law of England) the property shall be delivered up to the English consul, or if there be no consul, in that case the property shall be sent over to England in the next ship.' Now this section alone goes the length of saying, not merely that the property of a person accidentally dying in the Turkish dominions shall be delivered up, but it contemplates the case of a person permanently resident there. The forty-sixth article contemplates the case of an Englishman permanently resident in Smyrna. 'If any interpreter shall die, if he be an Englishman, proceeding from England, all his effects shall be taken possession of by the ambassador or consul; but if he be a subject of our dominions, they shall be delivered up to his next heir.' The forty-ninth article speaks of 'merchants of the afore-said nation.' The sixty-first article is to this effect: 'If any Englishman shall turn Turk, and it shall be represented and proved that, besides his own goods, he has in his hands any property belonging to another person in England, such property shall be taken from him, and delivered up to the ambassador or consul, that they may convey the same to the owner thereof.'

"What is the effect of this article? If an Englishman turns a Turk, his property will be governed by the law of Turkey; but if he has in his hands the property of any Englishman, that will be regulated by the law of England. So that the case of an Englishman becoming a Turk, and so becoming subject to the law of Turkey, is contemplated, and 'expressio unius est exclusio alterius.'

"The ninth article of the latter Treaty provides that English consuls shall not be named from among the subjects of the Porte. 'Generally speaking, a consul does not acquire a domicil by residence; but here a distinction is made between British subjects resident at Smyrna, and those who are not British subjects. 'If, then, the Treaty be applicable to British merchants resident or domiciled, in the ordinary acceptation of the term, in Smyrna, the provisions of the Treaty decide what is to be done in the case of succession to personal estate, namely, that it is to follow the law of England. . . . ."
No. 7.

STATUTES RELATING TO THE RUSSO-DUTCH LOAN.

An Act to carry into effect a Convention made between His Majesty and the King of the Netherlands and the Emperor of all the Russias (n).

[28th June, 1815.]

"Whereas, by a Convention signed at London on the 19th day of May, 1815, between His Majesty on the one part, and the King of the Netherlands and the Emperor of all the Russias respectively on the other, the following articles, among others, were agreed upon; that is to say, His Majesty the King of the Netherlands thereby engaged to take upon himself a part of the capital and arrears of interest, to the 1st of January, 1816, of the Russian loan made in Holland through the intervention of the House of Hope and Company, in Amsterdam, to the amount of twenty-five millions of florins Dutch currency; the annual interest of which sum, together with an annual payment for the liquidation of the same as thereinafter specified, should be borne by and become a charge upon the kingdom of the Netherlands; and His Majesty engaged on his part to recommend to his Parliament to enable him to take upon himself an equal capital of the said Russian loan, videlicet, twenty-five millions of florins Dutch currency; the annual interest of which sum, together with an annual payment for the liquidation of the same, as thereinafter specified, should be borne by and become a charge upon the Government of His Majesty; and the future charge to which his said Belgic Majesty and His Majesty should be respectively liable in equal shares on account of the said debt, was to consist of an annual interest of five per centum on the said capitals, each of twenty-five millions, together with a sinking fund of one per centum for the extinction of the same, the said sinking fund being subject however to be increased, on the demand of the Russian Government, to any annual sum not exceeding three per centum, the same to be payable till the capital of the said debt should be fully discharged, when the aforesaid charge for interest and sinking fund should wholly cease to be borne by His said Belgic Majesty and His Majesty respectively; and His said Belgic Majesty and His Majesty respectively bound themselves, on or before the usual day or days in each year on which the interest on the said debt should be due and payable, to deposit with the agent of the Russian Government in Holland, their respective proportions of the said interest and sinking fund, as above specified: Provided always, that previously to the advance of each successive instalment so to be paid, the said agent shall be

(a) 55 Geo. III. cap. 115.
"authorised to furnish a certificate to each of the said two high contracting parties, declaring that the preceding instalment had been duly applied in discharge of the interest, and in reduction of the principal of the said debt, together with the corresponding payments on account of the Russian Government, on that part of the debt which should remain a charge on the said Government; and it was further agreed, that the Russian Government should continue as heretofore to be security to the creditors for the whole of the said loan, and should be charged with the administration of the same; the Governments of the King of the Netherlands and of His Britannic Majesty remaining liable and bound to the Government of His Imperial Majesty for the punctual discharge as above of their respective proportions of the said charge; and it was thereby understood and agreed between the high contracting parties, that the said payments on the part of the King of the Netherlands, and of His Majesty as aforesaid, should cease and determine, should the possession and sovereignty (which God forbid) of the Belgic Provinces at any time pass or be severed from the dominions of His Majesty the King of the Netherlands, previous to the complete liquidation of the same; and it was also understood and agreed between the high contracting parties, that the payments on the part of the King of the Netherlands and of His Majesty as aforesaid should not be interrupted in the event (which God forbid) of a war breaking out between any of the three high contracting parties; the Government of His Majesty the Emperor of all the Russias being actually bound to its creditors by a similar agreement: And whereas the Commons of the United Kingdom have resolved that provision be made for enabling His Majesty to defray the expenses which may be incurred in the execution of the said Convention: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the Lord High Treasurer or the Commissioners of the Treasury of Great Britain, or any three or more of them, for the time being respectively, shall be and he and they is and are hereby empowered from time to time, out of the Consolidated Fund of Great Britain, to cause to be issued such sums of money as shall be required for the payment of the interest on such part of the capital of the said Russian loan as is agreed to be borne by His Majesty aforesaid, and also for the payment of a sinking fund of one pound per centum, or not exceeding three pounds per centum, as the case may be, on the said part of the said capital, for the extinction of the same, as and when the same may from time to time respectively become payable, and so long as the same should be payable conformably to the tenor of His Majesty's engagements, as specified in the said Conventions
An Act to enable His Majesty to carry into effect a Convention made between His said Majesty and the Emperor of all the Russias (o). [3rd August, 1832.]

"Whereas, by a Convention made and signed at London on the 16th day of November, in the year 1831, between His Majesty and the Emperor of all the Russias, His said Majesty and the said Emperor of all the Russias, considering that the events which had occurred in the United Kingdom of the Netherlands since the year 1830, had rendered it necessary that the Courts of Great Britain and Russia should examine the stipulations of their Convention of the 19th day of May, 1815, as well as of the additional article annexed thereto, considering that such examination had led the two high contracting parties to the conclusion that complete agreement did not exist between the letter and spirit of that Convention, when regarded in connection with the circumstances which had attended the separation that had taken place between the two principal divisions of the United Kingdom of the Netherlands, but that, on referring to the object of the above-mentioned Convention of the 19th day of May, 1815, it appeared that that object was to afford to Great Britain a guarantee that Russia would on all questions concerning Belgium identify her policy with that which the Court of London had deemed the best adopted for the maintenance of a just balance of power in Europe, and on the other hand to secure to Russia the payment of a portion of her old Dutch debt, in consideration of the general arrangements of the Congress of

(o) 2 & 3 Wm. IV. cap. 81.
"Vienna, to which she had given her adhesion, arrangements which remained in full force, their said Majesties, being desirous that the same principles should continue to govern their relations to each other, and that the special tie which the Convention of the 19th day of May, 1815, had formed between the two Courts should be maintained, agreed upon and concluded the following articles, among others; that is to say,"

"Art. I.—In virtue of the considerations above specified, His Britannic Majesty engages to recommend to his Parliament to enable him to undertake to continue on his part the payments stipulated in the Convention of the 19th day of May, 1815, according to the mode and until the completion of the sum fixed for Great Britain in the said Convention:

"Art. II.—In virtue of the same considerations, His Majesty the Emperor of all the Russians engages that if (which God forbid) the arrangements agreed upon for the independence and the neutrality of Belgium, and to the maintenance of which the two high Powers are equally bound, should be endangered by the course of events, he will not contract any other engagement without a previous agreement with His Britannic Majesty, and his formal assent:

"And whereas the said Convention has been ratified, and the ratifications thereof were exchanged on the 21st day of June last: And whereas by the stipulations of the said Convention of the 19th day of May, in the year 1815, between His Majesty the King of the Netherlands and His late Majesty the Emperor of all the Russians, to which His late Majesty King George III. agreed to be a party, mentioned in the said recited Convention of the 16th day of November, 1831, His Majesty the King of the Netherlands, by the first article thereof, engaged to take upon himself a part of the capital and arrears of interest to the 1st day of January, 1816, of the Russian loan made in Holland through the intervention of the House of Hope and Company in Amsterdam, to the amount of twenty-five millions of florins Dutch currency, the annual interest of which sum, together with an annual payment for the liquidation of the same, as thereafter specified, should be borne by and become a charge upon the kingdom of the Netherlands; and His Majesty the King of the United Kingdom of Great Britain and Ireland engaged on his part to recommend to his Parliament to enable him to take upon himself an equal capital of the said Russian loan, videlicet, twenty-five millions of florins Dutch currency, the annual interest of which sum, together with an annual payment for the liquidation of the same, as thereafter specified, should be borne by and become a charge upon the Government of His Britannic Majesty: And by the second article it was provided that the future charge to which their said Belgic and Britannic Majesties should be respectively liable in equal shares, on account of the said debt,
was to consist of an annual interest of five per centum on the said capitals, each of twenty-five millions of florins, together with a sinking fund of one per centum for the extinction of the same, the said sinking fund being subject however to be increased, on the demand of the Russian Government, to any annual sum not exceeding three per centum, the same to be payable till the capital of the said debt should be fully discharged, when the aforesaid charge for interest and sinking fund should wholly cease to be borne by their said Belgic and Britanic Majesties respectively; And by the third article their said Belgic and Britanic Majesties respectively bound themselves, on or before the usual day or days in each year on which the interest on the said debt should be due and payable, to deposit with the agent of the Russian Government in Holland their respective proportions of the said interest and sinking fund as above specified: Provided always, that previously to the advance of each successive instalment so to be paid the said agent should be authorised to furnish a certificate to each of the said two high contracting parties, declaring that the preceding instalment had been duly applied in discharge of the interest and in reduction of the principal of the said debt, together with the corresponding payments on account of the Russian Government on that part of the debt which should remain a charge on the said Government: And by the fourth article it was provided that the Russian Government should continue as theretofore to be security to the creditors for the whole of the said loan, and should be charged with the administration of the same, the Governments of the King of the Netherlands and of His Britanic Majesty remaining liable and bound to the Government of His Imperial Majesty each for the punctual discharge as above of the respective proportions of the said charge: And by the fifth article it was thereby understood and agreed between the high contracting parties, that the said payments on the part of their Majesties the King of the Netherlands and the King of Great Britain as aforesaid should cease and determine should the possession and sovereignty (which God forbid) of the Belgic Provinces at any time pass or be severed from the dominions of His Majesty the King of the Netherlands previous to the complete liquidation of the same; and it was also understood and agreed between the high contracting parties, that the payments on the part of their Majesties the King of the Netherlands and the King of Great Britain as aforesaid should not be interrupted in the event (which God forbid) of a war breaking out between any of the three high contracting parties, the Government of His Majesty the Emperor of all the Russias being actually bound to its creditors by a similar agreement: And whereas an Act was passed in the fifty-fifth year of the reign of His late Majesty King George III. for carrying into effect the said last-mentioned Convention: And whereas it is expedient that His Majesty should
be enabled to carry into effect the said Convention of the 16th day of November, 1831: be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for His Majesty, his heirs and successors, and they are hereby authorised, considering the circumstances of the separation between the two principal divisions of the United Kingdom of the Netherlands, to continue the payments stipulated in the said Convention of the 19th day of May, 1815, according to the mode and until the completion of the sum fixed for Great Britain in the said last-mentioned Convention, and to complete and carry into effect in all other respects the stipulations of the said last-mentioned Convention, and of the said Convention of the 16th day of November, 1831; and all the powers given by the said recited Act to the Lord High Treasurer, or Commissioners of the Treasury, or any three or more of them, for enabling His Majesty to make the payments required, and to defray the expenses which might be incurred in the execution of the said Convention of the 19th day of May, 1815, and all the enactments in the said Act contained shall be and continue in force, and shall be extended and applied to the completion and carrying into effect the stipulations of the said Convention of the 19th day of May, 1815, and of the said Convention of the 16th day of November, 1831.

APPENDIX VI.—Page 127, Part VI., Chap. I.

RIGHTS OF SOVEREIGNS.

DECISIONS IN THE FRENCH COURTS.

Tribunal du Havre.

( Correspondance particulière.)

Audiences des 10, 23 et 25 Mai.

AFFAIRE DE M. BLANCHET, AVOCAT, CONTRE LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAITI (a).

" À l'audience du 10, M. Blanchet a répliqué. Après de nouveaux détails sur l'importance et l'étendue de ses travaux, il continue ainsi:—

" 'Vous avez été payé, m'a-t-on-dit! Il est vrai que la commission insérée par le président Boyer a fait un savant calcul d'économie politique, pour établir que j'avais trop reçu, puisque

(a) Gazette des Tribunaux, May 27, 1827. Numéro 554.
APPENDIX VI.

609

"la somme qui lui avait été payée avait été supérieure au traitement des membres du corps législatif ; mais cette décision inspirée par le président Boyer est ridicule."

"Dans la consultation de M. Isambert, on a fait un autre argument. Voyez l'injustice de M. Blanchet ; il accuse le président d'être ingrat, de ne pas récompenser les travaux qu'il a demandés ; et il a donné 10,000 francs pour l'infortune des hommes de couleur, sans qu'aucune demande lui ait été adressée. M. Blanchet répond nemo liberalis nisi liberatus. M. Isambert sait mieux que personne que je n'ai pas été payé ; il en a la conviction."

"(M. Isambert fait un geste négatif.) M. Blanchet lit alors un passage d'une lettre de cet avocat du 10 Décembre 1826, où il est dit qu'il s'interposera pour que M. Blanchet soit traité honorablement. Donc à cette époque M. Isambert pensait que M. Blanchet n'avait pas été convenablement rétribué. Il est vrai qu'il peut avoir deux consciences, l'une comme homme privé, l'autre comme jurisconsulte et homme public."

"M. Isambert se lève et demande que M. Blanchet soit tenu de lire la lettre toute entière, afin qu'il n'en altère pas les dispositions, comme il l'a fait pour les documents lus à l'audience du 3 Mai, qu'il a positivement refusé de communiquer."

"M. Blanchet lit la lettre ainsi conçue :—"

"'Mon cher confrère,—Je ne puis vous communiquer les pièces que vous me demandez par votre billet d'hier ; elles ont été destinées au président seul et au ministre des affaires étrangères, où l'on poursuit l'affaire diplomatiquement. Elles ne m'appartiennent pas, et ne doivent pas voir le jour. Si le conflit est élevé, vous aurez tous vos moyens de défense."

"'Je vous dirai seulement qu'on a été prodigieusement étonné que vous ayez appelé le sieur Jean-Pierre Boyer devant les Tribunaux, tant comme particulier que comme président d'un état souverain, pour un travail confidentiel que l'on dit vous avoir été confié sur les lieux, et que vous ayez obtenu d'un juge du Havre la permission de saisir des propriétés d'un gouvernement sur un simple exposé."

"'Je crains tellement le débat public pour la cause que nous défendons tous, qu'en trouvant mal fondée, en la forme, la demande dont vous avez saisi le Tribunal du Havre, j'ai désiré un arbitrage."

"'Le président paraît fort piqué contre vous ; vous l'êtes contre lui. Un débat de cette nature ne peut qu'être affligeant, comme vous le disait M. le général Roche, dans mon cabinet."

"'Mon vif désir est que vous soyez traité honorablement de vos travaux. J'ai parlé, il y a longtemps, de ma manière de voir à ce sujet, à M. D——, notre ami commun. J'acquerrai avec le plus grand plaisir, et je m'empresserai d'appuyer de toutes mes
forces les demandes, qui auront pour but d'arriver à une conclu-
"sion agréable aux deux parties."

"M. Blanchet arrive à la question de compétence. Il reproduit
et développe ses argumens pour prouver qu'il est né et qu'il est
resté Français. Il serait Français quand même il serait né sur
le territoire d'Haiti, depuis la reconnaissance d'indépendance, et
qu quoique son père ait été l'un des auteurs de la constitution, et l'un
des fondateurs de cette indépendance. La preuve que la France
l'a considéré comme tel, c'est qu'elle l'a fait élever à ses frais, bien
que Haiti se fût séparé de la mère-patrie.
"M. Blanchet se trouvait exclu comme blanc de la naturalité
Haitienne; mais, a-t-on dit, n'êtes-vous pas un homme de cou-
leur? (b)

"Quoi qu'il soit évident qu'il n'est pas homme de couleur, M. 
Blanchet ne s'en défendrait pas s'il l'était; il a combattu lui-même
ce préjugé; il cite une foule de citoyens recommandables qui sont
de sang mélé: M. le général Roche, M. le docteur Fournier. Il
e en cite d'autres, auxquels il reconnaît un vrai talent; mais à
l'égard de ceux qui sont en Haiti, il s'abstiendra de dire leurs
noms, parceque ce serait les exposer à l'animaadversion du prési-
dent Boyer.

"Au reste, quand une goutte imperceptible ou apparente de sang
Africain coulerait dans les veines du demandeur, il n'en serait pas
moins Français, et en droit d'actionner le président. Mais il re-
ponse la qualification d'homme de couleur, parceque son acte de
naissance, du 21 pluviose an VI, n'en fait pas mention, comme le
prescrivaient les règlemens coloniaux.

"On a," ajoute M. Blanchet, 'dans la consultation et à l'audience,
insisté sur ce que j'aurais reçu 2,500 gourdes (12,500 fr.) sur mes
travaux. Je n'en ai reçu que 500. Les 2,000 gourdes de surplus
auront peut-être été portées dans les comptes d'Haiti, et gardées
par le président Boyer pour se les approprier.'
"M. le président observe que dans la consultation de M. Isam-
bert, il est dit que cette somme a été payée sur la cassette du
président.

"Dans ce cas," répond M. Blanchet, 'il ne peut se dispenser d'en
produire la quittance.'

"M. Isambert demande à répondre sur les insinuations que M.
Blanchet s'est permises contre lui à l'audience. Cette réponse est
nécessaire, parceque M. Blanchet ne lit pas exactement les docu-
mens dont il fait usage.

(b) "Quelques contestations se sont élevées sur la réalité de cette
interruption, rapportée par la Gazette des Tribunaux: mais tous les
doutes ont dû cesser depuis que M. Isambert a publiquement déclaré
que c'était lui qui l'avait adressée à M. Blanchet. Ainsi la Gazette des
Tribunaux a été, selon son usage, parfaitement exacte."
"M. le président.— *Le Tribunal verrait avec regret que deux
hommes honorables se livrassent à l'audience à des personnalisés;
peut-être M. Blanchet, plaidant dans sa propre cause, a pu se
servir de quelques expressions qu'il eût pu adoucir; mais le Tri-
bunal n'a rien entendu qui nécessitât une réponse.*

*M. Isambert.—* Si telle est l'opinion du Tribunal, n'étant ici
que conseil, je ne prendrai pas la parole. J'attendrai que M.
Blanchet ait publié textuellement le plaidoyer d'aujourd'hui; alors
je pourrai répondre à ce qui paraîtra l'exiger, en regrettant que
ces explications ne soient plus de nature à se passer entre nos
amis communs.

A l'audience du 23, M. Lizot, procureur du Roi, a porté la
parole.

Ce magistrat, après avoir retracé en peu de mots les faits de la
cause, se hâte d'aborder les hautes et importantes questions qu'elle
présente à résoudre. Il rappelle que la république d'Haiti oppose
à la demande de M. Blanchet, 1° l'incompétence des Tribunaux
Français; 2° l'insaisissabilité des marchandises arrêtées; et que
de plus elle réclame la suppression des écrits du procès comme
irrévérenos, injurieux, diffamatoires, soit envers elle, soit envers
son président.

Il pense que par cette dernière prétention la république ne
s'est point rendue irrecevable à proposer l'incompétence, parce-
que les deux demandes sont d'une nature entièrement différente;
qu'elles peuvent subsister ensemble, parceque l'effet de l'une n'a
aucun rapport avec l'effet que l'autre doit produire; que d'ailleurs
l'abandon de ses moyens ne se prsume pas.

Arrivant à la question d'incompétence, il établit que M. Blan-
chet est naturel François, et qu'en cette qualité il peut se préva-
loir des dispositions de l'art. 14 du Code Civil; il convient que
le demandeur ne peut se dire François, par cela seul qu'il est né
Français à Saint-Domingue, avant l'émanicipation; car il resul-
terait de ce système que tous les habitans de Saint-Domingue,
nés avant l'ordonnance royale, seraient encore Français. Il con-
vient encore que l'indépendance a le même effet que la conquête;
que, comme elle, elle soumet au nouvel état les sujets de l'ancien.

"Mais," ajoute M. le procureur du Roi, "la métropole, dont le
nouvel état se détache, ne perd que ce que la puissance nouvelle
a voulu acquérir ou a réellement acquis. Ce qu'elle rejette ne
subit ni changement ni incorporation. Qu'a donc acquis Haïti,
"colonie française, depuis des siècles? Lors de la révolution de
1791, les noirs ne s'arrêtèrent dans leur fureur que lorsqu'ils
n'eurent plus de maîtres à massacrer ou à proscire. Ceux qui
échappèrent vinrent en France, ou cherchèrent un asile sur d'aut-
tres terres hospitalières. Ces Européens, qui ne pouvaient rester
sans danger sur le sol de Saint-Domingue, déjà teint du sang de
leurs frères, dans des temps plus calmes, furent encore déclarés
incapables de toute fonction publique. Haiti les a toujours rejetés de son sein; ils n'ont pas été un seul instant soumis à la domination étrangère. Français quand il s'agissait de les proscrire, ils sont encore Français quand il s'agit de les défendre.

"M. Blanchet revint en France, en 1800, avec son père; il a fait ses études à Paris, où il a été inscrit sur le tableau des avocats. Il est donc Français comme tous les anciens colons expulsés. En vain, dirait-on, tardivement d'ailleurs, qu'il est d'origine Africaine; cette prétention invraisemblable devrait être prouvée autrement que par des assertions.

"Français à son arrivée en Haïti, M. Blanchet n'a point perdu sa qualité par lanaturalisation acquise en pays étranger. La "naturalisation est un fait, qui ne se peut opérer que d'après les "lois du pays dont on doit devenir sujet. Or, M. Blanchet n'a pas rempli ni pu remplir les conditions imposées par la constitution "Haïtienne; il n'a ni la couleur ni la résidence voulue; il est donc encore Français.

"Mais il a accepté des fonctions à l'étranger! Sans doute; "mais sont-elles du nombre de celles qui font perdre la qualité de "Français? S'est-il exposé à contrarier les intérêts de son pays? "Ces fonctions sont-elles incompatibles avec les devoirs de fidélité "envers la patrie? Il fut défenseur public, ce qui équivaut à la "qualité d'avocat en France; mais nulle loi représentée ne dit que "pour être avocat à Haïti il faille être Haïtien. Le ministère "public pense que pour appliquer le 2e § de l'art. 17 du Code il "faut que le Français ait rempli une sorte de magistrature, que cet "article a un but politique, et il tire argument d'un avis du conseil "d'état, du 21 Janvier 1812.

"On dit encore: "Il a fixé un établissement sans esprit de re- "tour." Mais, s'il en eût été ainsi, s'il eût voulu fixer son existence "en Haïti, n'aurait-il pas accepté les hautes fonctions, les faveurs "qui lui étaient offertes? Par sa jeunesse et ses talens il eût été "entraîné dans la carrière brillante qui lui était ouverte. Son refus "prouvait l'esprit de retour; il voulait revenir en France, où il "avait laissé des amis, des souvenirs honorables, où on le considère "encore comme Français, inscrit sur le tableau des avocats de "Paris, dans cette France que les étrangers visitent avec envie et ne "quittent qu'à regret, et qu'un Français n'abandonne jamais pour "patrie!

"La question la plus délicate de ce procès, continue le minis- "tère public, est celle de savoir si la république Haïtienne est, "dans l'espèce, justiciable des Tribunaux de la France. Habitue, "comme Français, à respecter les actes de la volonté royale, comme "magistrat, à les faire respecter, vous n'attendez pas de nous, "Messieurs, que nous révoquions un seul instant en doute l'indé- "pendance du gouvernement d'Haïti. Nous examinerons, en droit "rigoureux, si un état étranger peut, dans certains cas, subir la
"jurisdiction de nos Tribunaux." Le magistrat établit une distinction
lumineuse entre le gouvernement qui agit comme dépositaire de
la puissance publique et dans l'exercice de cette puissance, et le
gouvernement agissant dans l'exercice de son intérêt privé, comme
corporation, comme personne morale.

"Dans l'exercice de son droit public extérieur avec d'autres
nations, de son droit public intérieur avec ses sujets, vouloir tracer
des règles à un état qui use de ses droits, serait rompre l'égalité,
violer son indépendance; mais lorsqu'il forme des obligations
civiles, lorsqu'il se lie, lorsqu'il s'engage comme les particuliers
dans un intérêt purement privé, c'est alors qu'il devient individu
soumis aux mêmes lois. Or, l'art. 14 du Code Civil est positif;
s'il est vrai de dire que les gouvernemens peuvent être dans cer-
tains cas, considérés comme personne morale, il doit être appliqué,
dans toute sa rigueur, sans examiner si la disposition législative
règle ou non le droit des gens ou le droit civil. En France, l'état
est soumis à la juridiction des Tribunaux quand il s'agit de régler
ses intérêts privés; il est assimilé alors au simple particulier.
"Aussi a-t-il fallu une loi spéciale pour le dispenser de la caution
exigée dans l'art. 2185 du Code Civil.

"'En vain, lorsqu'il s'agit d'intérêts privés, on objecterait les
droits de souveraineté, d'indépendance des nations, parce que ces
droits ne sont point compromis; ils n'existent pour les gouverne-
mens qu'en tant qu'ils agissent dans l'exercice de leur puissance
publique, qui seule ne peut se soumettre à des maîtres; mais ce
principe est sans conséquence dans l'obligation privée de sa nature.
"Aussi Kluber dit-il que c'est comme nation que les gouvernemens
sont hors la juridiction des Tribunaux, parce qu'alors ils rentrent
dans l'état de nature.

"'Lorsque la république d'Haiti traduit des Français devant les
Tribunaux, sans contredit on peut exiger d'elle la caution, judi-
catum solvi (art. 16, Code Civil), uniquement parce que ce mot
étranger s'entend de tout demandeur qui n'est pas Français, et
dans ce cas, nulle atteinte ne serait portée ni à sa dignité, ni à son
indépendance, parce qu'alors elle n'agirait point dans l'exercice de
sa puissance publique.

"L'objection tirée de ce que, lors de la discussion du Code, on
retrancha un article relatif aux ambassadeurs, fortifie la distinction
qui doit dominer cette importante matière, en ce que l'ambassadeur,
représentant sa nation dans l'exercice de sa puissance publique, ne
pourrait, sans violation du principe de l'égalité et de l'indépen-
dance, être soumis à la juridiction privée.

"Après avoir posé cette base fondamentale de sa discussion, le
ministre publique examine les diverses objections faites par la
république, objections dont il trouve la solution par voie de
conséquence, et résumant ses principes avec force et concision, il
conclut encore sur cette seconde question en faveur de M° Blanchet.
Une dernière question se présente, c'est celle de savoir si M. Blanchet a pu saisir-arreter les marchandises de la république d'Haiti.

Le ministère public se demande qui les avait empreintes du sceau de l'insaisissabilité? Ce n'est point l'ordonnance d'éman- cipation; il n'existe et on n'invoque aucun traité qui les excepte du droit commun; elles sont alors, comme propriété ordinaire, régies, quant à la saisissabilité, par les art. 557, 558 du Code de procédure. Il se peut que dans l'intention de la république elles eussent une destination certaine. Mais où en est la preuve légale pour les tiers qui ne voient et ne peuvent voir que le propriétaire actuellement saisi? Cette volonté, d'ailleurs, peut changer, et on ne peut dire que de plein droit toutes les propriétés Haïtiennes, sur le sol Français, soient destinées au paiement de la dette des 150 millions.

Les fonds publics Français sont exceptés des règles ordinaires, il est vrai, mais les exceptions sont de droit étrout; il a même fallu une loi spéciale pour déroger au droit commun, et il n'existe, en France, aucune loi qui déclare insaisissables les marchandises d'Haiti.

Quant à la question de suppression d'écrits, qui a été convertie en une demande en réserve, le ministère public pense qu'il faut surseoir à statuer jusqu'à la discussion du fond, parce qu'alors, seulement, on pourra juger du mérite des faits allégués dans la demande.

Après ces conclusions, le défenseur de la république a produit la pétition de M. Blanchet pour être nommé défenseur public à Haïti, pétition dans laquelle il reconnaissait qu'il revient dans son pays.

M. Blanchet répond que cette pétition ne change rien aux principes du droit que la loi Française lui confère, qu'elle n'est d'aucune importance, et que les adversaires la connaissent depuis longtemps.

A l'audience du 25, le Tribunal a prononcé son jugement par lequel il considère M. Blanchet comme Français d'origine, ayant conservé cette qualité; mais déclare les Tribunaux Français in-compétens, parce que l'art. 14 du Code ne régit que les rapports des particuliers entre eux, et sous ce point de vue même contient une exception au droit commun, exception qui doit être restreinte dans les termes rigoureux de la loi.

Relativement aux réserves, le Tribunal ayant égard à la position où se trouvait M. Blanchet et aux injures à lui prodiguées dans les journaux, et même dans les journaux d'Haïti, a débouté le président de la république de sa demande; mais il a condamné M. Blanchet aux dépens.
APPENDIX VI.

(From the Gazette des Tribunaux, May 3, 1828. Numéro 855.)

Tribunal de 1ère Instance (1ère Chambre).

(Présidence de M. Moreau.)

Audience du 2 Mai.

AFFAIRE DE LA MAISON BALGUERIE, DE BORDEAUX, CONTRE LE GOUVERNEMENT ESPAGNOL (c).

AFFAIRE DE MM. Ternaux, Gandolphé et Compagnie, CONTRE LA RÉPUBLIQUE D'HAÏTI (d).

"M. le Président Moreau a prononcé le jugement suivant dans l'affaire Balguerie:

"'Attendu que le droit de juridiction est une émanation de la souveraineté;

"'Attendu que l'art. 14 du Code Civil ne peut-être appliqué à un souverain étranger, d'abord parce qu'il ne dispose que pour les obligations contractées envers un Français par un individu étranger, et encore parce qu'on ne pourrait l'étendre aux souverains étrangers sans porter atteinte au droit qu'a tout gouvernement indépendant d'être seul juge de ses actes;

"'Attendu, en fait, que l'opposition formée par la maison Balguerie entre les mains d'Aguado, a pour cause l'exécution d'un traité passé entre S.M. catholique en cette maison pour l'affrètement d'un certain nombre de navires destinés à transporter les troupes du gouvernement espagnol;

"'Qu'un pareil traité est évidemment un acte d'administration publique, et ne peut, sous aucun rapport, être considéré comme contrat privé;

"'Attendu, d'un autre côté, que les deniers sur lesquels l'opposition a été formée, sont des deniers publics destinés au paiement de l'emprunt royal espagnol, et qui ne pourraient être saisis sans entraver la marche de ce gouvernement;

"'Qu'admettre une personne privée à saisir en France les fonds d'un gouvernement étranger, serait violer les principes sacrés du droit des nations, et s'exposer ainsi à des représailles funestes;

"'Attendu, enfin, que les jugemens des Tribunaux Français étant sans autorité hors du royaume, le gouvernement espagnol ne pourrait pas être forcé de s'y soumettre, et par conséquent de reconnaître la validité du paiement qui serait fait par Aguado;

"'D'où il suit que le Tribunal est incompétent.

"Fait main levée de l'opposition,' etc."

(c) Gazette des Tribunaux, 19th and 26th April.
(d) Ib., 26th April.
Tribunal Civil de la Seine (1re Chambre).
(Présidence de M. de Belleyme.)

Audience du 16 Avril.

S. A. MÉHÉMET-ALI, VICE-ROI D'ÉGYPTE, ET M. SOLON, AVOCAT.—
FONDATION D'UNE ÉCOLE D'ADMINISTRATION PUBLIQUE EN ÉGYPTE.—
DEMANDE EN 100,000 FRANCS DE DOMMAGES-INTÉRÊTS (e).

"Cette affaire, qui promettait des révélations sur le gouvernement
"du vice-roi et sur les relations de la France avec l'Égypte, avait
"attiré à l'audience une grande affluence de curieux.

"S. A. Méhémet-Ali, vice-roi d'Égypte, était représentée par
"M. Odilon Barrot, qui, comme on sait, a fait récemment un
"voyage en Orient, et qui mieux que personne, en sa qualité de
"frère de notre consul-général en Égypte, pouvait donner au
"Tribunal des explications sur le véritable état des choses en
"Égypte.

"Voici dans quelles circonstances le vice-roi d'Égypte avait à se
"défendre devant le Tribunal de la Seine contre une demande en
"100,000 francs de dommages-intérêts:

"M. Solon, dont le nom était d'un heureux augure pour donner
"à l'Égypte des leçons d'administration et de civilisation, avait été
"choisi par l'intermédiaire de M. Macarèl, conseiller d'État, et
"d'Artim-Bey, secrétaire de S. A. le pacha d'Égypte, pour aller
"fonder au Caire une école d'administration publique. Il était dit
"que M. Solon resterait pendant huit ans au service du vice-roi.

"Il devait recevoir 15,000 francs de traitement par an et un loge-
"ment digne de sa mission et dans le voisinage de l'école. Au
"mois d'août 1845, M. Solon, à la suite de quelques difficultés avec
"le vice-roi, quitta l'Égypte et revint en France. Il a prétendu
"que le vice-roi lui avait signifié un congé sans motif, et qu'il avait
"dû céder à la toute-puissance du pacha. De retour en France, M.
"Solon a fait pratiquer des saisies-arrêts entre les mains de deux
"négociants de Marseille, sur les valeurs et marchandises qu'ils pou-
"vaient avoir pour le compte du gouvernement Égyptien. Depuis,
"ces saisies-arrêts ont été dénoncées au gouvernement Égyptien
"en la personne d'Artim-Bey, représentant et mandataire du pacha.

"De plus, M. Solon a fait assigner le gouvernement Égyptien de-
"vant le Tribunal Civil de la Seine, pour le faire condamner à lui
"payer 100,000 francs de dommages-intérêts, tant pour six années
"de traitement que pour frais de voyage en Égypte et de retour en
"France. Un jugement par défaut dont nous avons rendu compte,
"l'an dernier, a accueilli la demande de M. Solon.

"S. A. le vice-roi a formé opposition au jugement rendu contre lui par le Tribunal de la Seine. Aujourd'hui, il prétendait que le Tribunal de la Seine était incompétent.

M. Odilon Barrot, avocat de S. A. Méhémet-Ali, vice-roi d'Egypte, s'exprime ainsi :

"C'est un gouvernement étranger qui est assigné devant vous, et qui l'est pour une action personnelle, à raison d'un acte essentiellement gouvernemental. Poser ainsi la question, c'est assez vous dire que le débat est hors du droit civil ordinaire, et qu'il a son siège dans le droit des gens. Il s'agit, en effet, de savoir si on peut traduire un gouvernement étranger devant les Tribunaux Français pour un acte de la souveraineté. L'indépendance des États, les conditions de la souveraineté, les principes incontestés du droit des gens, ne permettent pas qu'on soutienne d'aussi étranges principes. Aucune discussion n'est possible à cet égard. Tous les auteurs qui se sont occupés du droit des gens, Montesquieu, Vatel, Puffendorf, tous ont consacré le principe de l'indépendance des gouvernements, et soutenu que la juridiction d'un état ne pouvait apprécier les actes d'un gouvernement étranger. La juridiction découle de la souveraineté. Pour que les Tribunaux Français fussent compétents, il faudrait admettre que la juridiction existe indépendamment de la souveraineté. À cet égard, les principes sont si évidents que le vice-roi ne pourrait accepter pour juge un Tribunal de France sans abdiquer sa souveraineté.

"Je vais vous exposer rapidement les faits qui ont donné naissance au procès actuel.

"M. Solon, avocat, ancien conseiller de préfecture à Montauban, a accepté la mission d'aller au Caire, en Égypte, en qualité de professeur d'administration publique; M. Solon est entré au service du gouvernement Égyptien avec de grands avantages matériels. Il devait recevoir 15,000 fr. par an. De plus, M. Solon avait au Caire une vaste maison à sa disposition, et indépendamment de tous les avantages que la munificence éclairée du pacha sait si bien prodiguer, M. Solon avait à remplir en Égypte une mission glorieuse et digne de tenter la plus noble ambition, d'exalter les sentiments les plus élevés d'un grand cœur, les pensées les plus vastes d'un esprit éminent. Si le vice-roi a arraché l'Égypte par la force de sa volonté et l'énergie de son gouvernement à l'anarchie militaire, s'il a pu asseoir dans ce pays une sécurité telle qu'une femme peut traverser le désert et faire sans danger le voyage de la Palestine, s'il a réussi au milieu des conflits Européens à assurer sa puissance et à fonder une dynastie, il y avait une chose qui n'était au pouvoir ni de sa force ni de son génie,—c'était d'improviser et de créer des hommes éclairés et capables par leurs lumières de conduire l'Égypte en la soutenant dans les voies de la civilisation où il la faisait entrer. Voilà
"Pourquoi Méhémét-Ali s’est adressé à la France, à laquelle appartiennent toutes ses sympathies, et où il envoie des élèves destinés un jour à concourir aussi à l’œuvre glorieuse qu’il se propose.

" M. Macarel, que le Tribunal connait et que nous honorons tous, avait été chargé par Artim-Bey, le secrétaire du vice-roi, de chercher un homme digne de cette mission. M. Macarel choisit M. Solon. M. Solon ne pouvait ambitionner un plus noble rôle que celui qui lui était offert. Préparer par l’enseignement un peuple entier à la civilisation, transporter dans l’Orient, en intrusant les jeunes Égyptiens qui devaient plus tard régir les destinées de leur pays, les idées de la France, la civilisation de l’Occident, c’était la plus belle et la plus sainte mission.

" Quand on sait pour quels motifs futilles, pour quelles causes subalternes M. Solon a renoncé à ce sacerdoce, on le regrette pour lui, pour sa destinée, pour sa gloire. M. Solon a abandonné l’Égypte et renoncé à sa mission, parce que le vice-roi l’a prié de quitter le palais qu’il habitait pour le céder au chérif de la Mecque, au chef de la religion musulmane, que le sultan traite d’égal à égal. Le vice-roi a offert à M. Solon de venir habiter le palais qu’occupait le ministre des affaires étrangères. Ce n’était pas assurément une demeure indigne de M. Solon. Cependant il a résisté à tout, — sommations des ministres, invitations du vice-roi. Seulement Méhémét-Ali a dû alors lui laisser cette alternative, ou de quitter le palais ou de quitter l’Égypte. M. Solon a préféré quitter l’Égypte.

" M. Solon a insinué qu’il avait été renvoyé du Caire parce qu’il y professait en plein Orient des doctrines qui étaient plus ou moins en harmonie avec les règles qui dominent le gouvernement Égyptien. Alors même que l’insinuation de M. Solon serait exacte, le Tribunal Français aurait-il de droit d’apprécier cet acte du gouvernement de Méhémét-Ali. Il serait assez étrange de voir faire une enquête ordonnée par un Tribunal Français pour savoir de quelle façon on enseigne au Caire et en Égypte l’administration publique. Il suffit de poser cette hypothèse pour faire ressortir combien il est exorbitant de faire juger par un Tribunal Français le service d’un fonctionnaire qui s’est soumis à un gouvernement étranger.

" En résumé, je vous ai démontré que le Tribunal était incomptent sous deux rapports, la qualité de la partie assignée et la nature de l’acte soumis à votre appréciation. Quelle est la qualité de la partie assignée? C’est un gouvernement étranger qui est assigné devant vous directement pour un acte administratif, pour avoir destitué un fonctionnaire, un agent de son autorité.

" Quelle est la nature de l’acte décerné à votre justice? C’est un acte d’un gouvernement étranger.

" En vertu de quelle loi, M. Solon peut-il fonder son action
contre le gouvernement Égyptien ? En vertu de l'article 14 du
Code Civil ? Mais il s’agit dans cet article d’étrangers résidens,
il ne s’agit pas d’un gouvernement étranger.
‘ Sous le double rapport de la qualité de la partie assignée et
de la nature de l’acte, l’incompétence du Tribunal est, je crois,
démontrée.’
M. Solon présente sa défense en ces termes :—
‘ La présence de mon contradicteur me place dans un singulier
embarras. Comment pourrai-je m’expliquer sur sa plaidoirie en
présence de rapports si bienveillants et si confidentiels qui m’ont
attaché à M. le consul-général de France (M. Adolphe Barrot) ?
Oh ! oni, sans doute, on a eu raison de le dire, la cause est grave,
car si elle intéresse l’Égypte et les gouvernemens étrangers, elle
intéresse bien davantage encore l’indépendance du pays et
l’intérêt d’un grand nombre de nos compatriotes. Que le Tri-
bunal veuille donc songer aussi à la cause de ces Français et les
defendre contre un déni de justice aussi caractérisé que celui
qu’on veut lui faire consacrer.
‘ Je suis parti en 1844 pour l’Égypte, ajoutant foi à la répu-
tation si extraordinairement usurpée du pacha. J’acceptai la
mission grande, nationale et philanthropique qui m’était offerte.
Je ne fis aucune difficulté sur les conditions, et je partis après
avoir obtenu une ordonnance Royale qui m’autorisait à exécuter
le contrat que je venais de former avec Méhémet-Ali. Arrivé
en Égypte, je fus surpris du singulier accueil qui me fut fait ; on
parla hautement de mystification, et il n’y eut pas une seule voix
qui voulut prendre au sérieux le contrat qui m’aménait en Égypte.
Moi qui, de bonne foi, venais pour former des hommes à la con-
naissance du droit administratif, je proposai de me charger de
quelques jeunes gens qui seraient plus tard placés dans les mi-
nistères. Tout me fut accordé. Il en coûtait peu, et d’ailleurs
des réserves étaient faites pour l’avenir, réserves qui devaient em-
pêcher le succès de mes soins. Bientôt arriva l’épisode où les
élèves qu’on m’avait confiés devaient être examinés, et c’est alors
que le pacha ne sut plus déguiser sa pensée ; mes élèves furent
admirables. L’examen fut brillant, trop brillant, et les sujets
payèrent cher les éloges qui leur furent prodigués. Quant à
moi, je fus vivement interpelle par le secrétaire du pacha, qui me
dit que le pacha n’entendait pas ainsi l’administration publique que
j’étais chargé d’enseigner, et que j’aurais dû me borner à donner
à mes élèves quelques notions sur les successions.
‘ Les successions, grand Dieu ! répondis-je au secrétaire du
pacha, mais elles sont réglées par le Coran, et tout infidèle qui se
permets d’expliquer les saintes écritures de l’Islamisme mérite la
mort. “ Ah ! c’est juste!” me dit mon interlocuteur. Telle fut
la seule réponse qui me fut faite. Je me trompe. On me fit une
réponse plus catégorique. Mes jeunes gens furent sacrifiés. On

APPENDIX VI. 619
"leur refusa toute espèce de grades, et ils durent déplorer avec moi les tristes conséquences de mes enseignemens.

"Dès ce moment s'accomplissait cette prédiction qu'on trouve consignée dans un ouvrage publié récemment par M. Schuelcher, sous le titre de L'Egypte en 1845.

"On lit dans cet ouvrage, page 61, chapitre VI :—

"Il y a trois ou quatre ans à peine, Méhémet-Ali a fait venir de France un jurisconsulte, M. Solon, pour établir au Caire un cours de droit administratif. C'est encore une de ces jongleries sur lesquelles il compte pour tromper l'Europe. A quoi servirait un cours de droit administratif dans ce pays où règne le bon plaisir, et auquel on ne veut pas donner d'administration parce qu'on veut conserver l'arbitraire ? Le vice-roi a confié cinq élèves à M. Solon, et au bout de la première année il l'a voulu lui enlever le meilleur, pour en faire, quoi ?—le chef d'une buanderie. M. Solon paraît homme à ne pas conserver de rôle dans la grande comédie Égyptienne. Il exigerait probablement l'organisation définitive de son école avec ses conséquences sérieuses, et comme on ne voudra pas lui accorder, il y a lieu de croire que la toile tombera avant peu sur l'intermédia qu'on lui avait confié."

"Il me fut impossible," dit M. Solon, 'de ne pas voir où on voulait en venir. Cependant je tins bon. Je demandais de nouveaux élèves; on m'en donna qui savaient à peine épiler les mots. Ils me demandèrent de les faire nommer lieutenans, eu déclarant qu'ils partiraient tous si je ne pouvais leur obtenir de grades. La condition était rigoureuse, impossible; je ne pouvais n'y soumettre, et je vis partir tous mes nouveaux élèves, qui furent chercher leur grade ailleurs. Cependant, ma résignation fatiguait le pacha, et il me fit encore donner six élèves qui me faisaient aussi des conditions. Je ne pouvais plus y tenir, et pour faire cesser cet état de choses réellement insupportable, je fis un rapport qui était d'ailleurs obligatoire à Méhémet-Ali. Je lui demandai, avec tous les égards possibles, l'organisation de son école. Je passe sous silence tous mes juste griefs. Je consentis à ne pas parler de faits de la plus haute gravité; je voulais rendre impossible tout mauvais procédé.

"Je connaissais bien mal les hommes auxquels j'avais affaire. Mes égards furent pris pour de la faiblesse. On repoussa toute demande d'organisation. On se mit à me tourmenter pour mon logement, qu'on voulut me faire quitter malgré les promesses formelles qui m'avaient été faites. J'écrivis que j'étais prêt à quitter ce logement; je me bornai à demander quelques jours. Je reçus alors une lettre d'Artim-Bey qui contenait la phrase la plus in-convénante. Enfin, après une correspondance que je recette de ne pouvoir faire connaître aujourd'hui au Tribunal, je reçus un ordre de départ. J'étais remercié. Je fus chez le consul général de France, M. Barrot, frère de mon honorable adversaire; je lui
demandai son appui pour faire exécuter mon contrat : tout fut
inutile. J'avais affaire à un prince et à des conseillers qui ne com-
pregnent pas la justice. Je ne pus même obtenir que des arbitres
 fussent chargés de prononcer sur ma réclamation.

" C'est alors que je fis donner assignation à Méhémet-Ali devant
M. le consul général de France pour assister au dépôt de mon
contrat, et je partis pour la France. Arrivé à Marseille, et por-
teur de mon contrat revêtu de la formule exécutoire, je fis saisir
les marchandises du pacha dans l'entrepôt de Marseille. J'ai de-
mandé plus tard au Tribunal de la Seine la validité de la saisie.
Le Tribunal, jugeant par défaut, il est vrai, a accueilli ma de-
mande, et c'est sur l'opposition du pacha d'Égypte que le Tri-
bunal est appelé à statuer.

" M. Solon s'attache à repousser l'incompétence soutenue au nom
du pacha d'Égypte. Je conviens, dit-il, 'qu'on ne peut pas faire
une saisie dans le domicile d'un ambassadeur, ni sur un prince
en passage sur le territoire national. Mais si un prince fait des
affaires en France, s'il a sur notre territoire des marchandises, des
meubles, etc., tous ces objets sont saisissables.' M. Solon cite
Martens, Vatel, Klüber, Weathon, etc.

" De quoi s'agit-il ? D'une saisie faite au préjudice de Mé-
hémet-Ali, à Marseille; au préjudice du pacha faisant le com-
merce, ayant ses courtiers, ses consignataires, et étant sans nul
doute soumis à ce titre aux lois de douaniers. Pourquoi donc, dit
M. Solon, 'ne pourrais-je pas de même exercer des poursuites sur
les denrées, sur les marchandises qu'il a en France, à raison de
son négoce, car il est incontestable que Méhémet-Ali, tout en
étant pacha en Égypte, est en même temps négociant.

" Maintenant, Messieurs, permettez-moi d'arrêter votre attention
sur un point assez délicat de cette affaire. Vous savez que Mé-
hémet-Ali n'est plus un souverain comme il l'a été. Le traité de
1840 l'a soumis à la Porte, l'a forcé de reconnaître la souveraineté
du sultan. S'il est souverain encore, ce n'est qu'un souverain
sous-ordre; c'est pourquoi il s'appelle le vice-roi. Il n'a pas, il
ne peut avoir le privilège de la souveraineté; il cherche bien à
l'avoir tout entière, mais ce n'est là qu'une prétention. On se
rappelle la courtoisie dont Ibrahim-Pacha, le fils de Méhémet-
Ali, vice-roi d'Égypte, a été l'objet dans son récent voyage en
France et son séjour à Paris. Quand Ibrahim fut reçu aux
Tuileries, il y fut présenté par l'ambassadeur Ottoman.

" Je rappellerai encore que le droit des gens et le droit inter-
national qui règlent les relations entre les puissances chrétiennes,
est tout à fait différent de celui qui régit les rapports de l'Europe
avec les peuples d'Orient.

" Le droit international a été fondé par les puissances chrétiennes,
à l'époque des croisades et contre les Musulmans. Quant à
ceux-ci ils ont des principes tellement incompatibles avec ceux de
l'Europe, que tous les auteurs sont d'accord pour reconnaître ces
différences essentielles qui ne permettent pas aux chrétiens de se
laisser juger par les magistrats Musulmans. On reconnaît bien
que l'empire Ottoman cherche à rentrer dans notre droit inter-
national, mais jusqu'ici ce rapprochement est loin d'être complet.'
M. Solon cite Weathon, Histoire du Droit des Gens, et Schmalz,
Du Droit des Gens, ainsi que les traités de 1542 et 1740, qui ne
permettent pas aux magistrats Musulmans de juger un chrétien
s'il n'est assisté d'un représentant du consulat.
"Je le demande," dit M. Solon, "quel serait donc le juge que me
donnerait mon honorable contradicteur ? Des juges Musulmans,
le gouvernement du pacha, je n'en veux pas, car ils ne connaissent
daux autres principes que celui-ci : le gouvernement, toujours le gou-
vernement, tout vient de lui et tout revient à lui !
"Sachez-le donc, Messieurs, le gouvernement de Méhémé-Ali
ne doit jamais rien perdre. C'est en vertu de ce droit odieux
qu'au retour de l'armée de Syrie on faisait payer aux soldats qui
avaient été blessés et faits prisonniers les armes que l'ennemi leur
avait enlevées. C'est ainsi qu'on osait faire payer à un pharma-
cien les onguents et compresses employées pour panser les
blessés, parce qu'il n'avait pas retiré de quittances; c'est ainsi
qu'on faisait payer au frère les impositions du frère absent; c'est
ainsi qu'un de nos compatriotes, M. Grégoire, ayant été indigné-
ment bâtonné, le ministre coupable, qui s'était permis cette in-
famie, fut récompensé au lieu d'être puni : le coupable fut promu à
des fonctions importantes dans le ministère des finances. C'est ce
mème fait qui a déterminé le départ de M. de Lavalette, notre
consul-général, et, par suite, la nomination de M. Adolphe
Barrot.
"Oh ! qu'il est à déplorer que mon contradicteur n'ait commu
l'Egypte qu'au milieu des fêtes préparées sur son passage; com-
bien il est à regretter qu'on lui ait laissé ignorer les malheurs des
pauvres habitants de l'Egypte, il saurait pourquoi je n'ai pas voulu
me soumettre à cette justice à la Turquie. Non jamais, je n'ac-
cepterai les juges d'Egypte, et si la justice du pays me manquait,
je n'humilierais pas la robe d'avocat que je porte jusqu'à me sou-
mettre au jugement du pacha.'
"M. Odilon Barrot réplique dans l'intérêt du pacha d'Egypte,
et commence ainsi :—
"Mon adversaire a abusé de la réserve qui m'était commandée
dans cette affaire en venant apporter à votre barre certains faits,
certaines inductions contre lesquels je dois protester avec le dé-
menti le plus formel. Ma position personnelle dans ce débat, m'in-
terdit d'entrer dans des explications sur les faits dont vous a parlé
M. Solon. Je n'ai pas à défendre aujourd'hui le gouvernement
Egyptien que mon adversaire vient d'attaquer. Il a prétendu
que le gouvernement de Méhémé-Ali n'était pas une souve-
"raineté, parce que le vice-roi paie un tribut à la Porte. Cela est
"vrai, mais ce n’est pas là la question qui s’agite entre nous en ce
"moment."

"M. Odilon Barrot soutient que M. Solon a traité avec Méhé-
"met-Ali, comme avec un souverain étranger, puisqu’il a demandé
"et obtenu l’autorisation du gouvernement Français pour entrer au
"service du gouvernement Égyptien. ‘Mon adversaire’ dit-il, ‘a
"si bien compris que le débat était entre lui et le gouvernement
"Égyptien, qu’il a assigné en la personne du ministre des affaires
"étrangères du vice-roi.’

"M. Odilon Barrot, après avoir résumé sa première discussion
"sur la question de compétence, termine ainsi :—

"‘Cette question est d’une grave importance, non seulement pour
"vous, Monsieur (l’orateur s’adresse à M. Solon), mais encore
"pour tous les Français qui s’honorent eux-mêmes, et qui honorent
"la France, en consacrant leur intelligence au développement de la
"civilisation naissante de l’Orient. Mais qu’on y songe, si le vice-
"roi se voit en butte aux attaques des Français qu’il prend à son
"service, s’il se voit traduit pour des actes de son pouvoir devant
"des Tribunaux Français, il répoussera loin de lui les représentants
"de notre pays.’

"M. l’avocat du Roi Mongis a pris la parole en ces termes:—

"‘On vous l’a dit, Messieurs, la question est grande, mais la
"simplicité est presque toujours l’attribut de la grandeur. A ce
"titre, nous croyons le débat facile à préciser, et nos conclusions
"ne se feront pas attendre.

"‘Le Tribunal est-il compétent pour statuer entre M. Solon et
"S. A. Méhémet-Ali ?

"‘Et d’abord, sur quel point s’agit le question de compétence?
"Il semblerait, à entendre l’une des parties, qu’elle vous demande
"simplement à faire un acte conservatoire ou à saisir en vertu d’un
"titre depuis long-temps passé en force de chose jugée. On vous
"cite des auteurs qui ont reconnu saississables les biens de toute
"nature appartenant même à des souverains sur un sol étranger.

"‘Mais la difficulté n’est pas là : ce que l’on vous demande, c’est
"ce titre même qui manque à M. Solon; c’est la condamnation
"dont il a besoin pour agir contre son adversaire; c’est la consé-
"cration du fond même de son droit, sans en apprécier les limites.

"‘Et c’est ici que se présentent deux graves questions préjudi-
"cielles, tirées, la première de la qualité de l’une des parties, la
"seconde de la nature du contrat.

"‘Sur la première question, celle de souveraineté, elle a été de-
"batue par le défenseur de Méhémet-Ali, avec l’autorité de cette
"voix grave et sévère qui se prête si bien aux grandes considéra-
"tions d’ordre public. Nous nous en référions sur ce point à ce qui
"a été dit, ne voulant pas l’affaiblir en le répétant. Nous ajoutons
"seulement que M. Solon a rendu l’argumentation plus puissante
APPENDIX VI.

"contre lui en reconnaissant qu'il avait traité avec le vice-roi d'Égypte en même temps qu'avec Méhémet-Ali, avec le prince souverain, inséparable, selon lui, du simple particulier, et pour tout dire en un mot, la nature des institutions qui régissent l'Orient rendait cette confusion inévitable, car là tous les pouvoirs reposent dans une seule main, et c'est là qu'il est encore permis aux princes de dire : L'État, c'est moi.

" 'La nature du contrat ne résiste pas moins à la compétence, car M. Solon n'a pas fait une marché, il a accepté une fonction publique ; il s'est mis au service d'une puissance : il ne relève que d'elle seule, quant à la rémunération qu'elle a pu lui accorder.

" 'Et voyez, Messieurs, combien ceci est frappant ! Supposez un Français acceptant des fonctions du prince en France, là où vous avez, comme on dit, plénitude de juridiction, est-ce à vous que ce fonctionnaire viendrait demander le règlement de son honorable salaire ? Non, une autre juridiction devrait être saisie. Eh quoi ! alors que la fonction relève d'un prince étranger, libre, indépendant, alors que la difficulté grandit de toute la puissance d'une question de droit international, c'est à votre barre que le fonctionnaire étranger traînerait une souveraineté étrangère !

" 'Cela est impossible.

" 'Si M. Solon prétendait qu'il a fait un marché et non pas accepté une fonction, nous lui répondrions avec une lettre adressée par lui à M. le garde-des- sceaux de France, lettre par laquelle " au moment," dit-il, " d'accepter une fonction à l'étranger il en demande l'autorisation à son gouvernement naturel, afin de ne pas perdre sa qualité de Français."

" 'La question ainsi précisée, Messieurs, nous ne croyons pas devoir alarmer vos esprits par un aperçu des graves difficultés des complications de toute nature que pourrait entraîner l'exécution de votre jugement, s'il était favorable aux vœux du demandeur. Ces difficultés sont d'une telle nature, cependant, qu'elles ont pesé pour beaucoup dans la fixation de la jurisprudence qui, pour le dire en passant, est à peu près unanime et constante dans le sens des principes que nous défendons. C'est quelque chose, en effet, dans le doute, que cet adage : *Salus populi, suprema lex esto !*

" M. l'avocat du Roi fait remarquer en peu de mots qu'en agissant longuement la question de savoir si S. A. était ou non un souverain indépendant, on n'a fait tout au plus que reculer la difficulté.

" En effet, en supposant que le vice-roi relevât de la Porte, pour la ratification du contrat dont il s'agit, cette ratification a eu lieu tacitement, et, en tous cas, le procès engagé contre la Porte elle-même n'en serait peut-être que plus difficile.

" 'Messieurs,' dit en terminant M. l'avocat du Roi, 'puisqu'il on a beaucoup élevé ce débat, puisque l'on a cru devoir de parti et d'autre apprécier d'une manière bien différente l'attitude et les
droits de l'Égypte envers les nationaux Français, qu'il nous soit permis de ne pas rester tout à fait étranger à ces appréciations. Il est digne de la magistrature Française de rendre hommage à un prince qui vient apprendre en France à gouverner les hommes selon la loi, qui vient demander à la France de combler l'abîme qui sépare encore l'Orient de l'Occident, la barbarie de la civilisation, le despotisme de la liberté, l'arbitraire de la légalité. Et vous ne voudrez pas, Messieurs, que ce prince qui s'est montré plein d'admiration pour vos lois, parce qu'elles sont égales pour tous, puisse croire qu'il s'est trompé, et que vos lois, en respectant la liberté des individus, se plaisent à violer l'indépendance des nations et la souveraineté des princes.'

"Le Tribunal, conformément à ces conclusions, a rendu le jugement dont voici le texte:—

"'Attendu que selon les principes du droit des gens, les Tribunaux Français n'ont pas juridiction sur les gouvernements étrangers, à moins qu'il ne s'agisse d'une action à l'occasion d'un immeuble possédé par eux en France comme particulier, ce qui emporte attribution territoriale et exécution.

"'Attendu qu'en matière de déclinatoire le juge doit avant tout consulter les termes de la demande;

"'Attendu que l'action de Solon est une action personnelle qu'il motive sur un prétendu engagement, dont la rupture lui aurait causé un préjudice;

"'Attendu que toutes les expressions de la demande lui donnent le caractère personnel et révèlent qu'elle est dirigée contre le gouvernement Égyptien, et non contre un particulier;

"'Attendu que pour apprécier cette demande, il ne faudrait pas examiner un acte particulier ayant pour cause un intérêt privé; mais un acte administratif et gouvernemental, intervenu entre un gouvernement et un fonctionnaire, auquel il a été confié un emploi et une mission dont le demandeur a dû peser les conséquences qu'il serait en outre nécessaire de rechercher les causes de la rupture qui motive l'action; que de pareilles appréciations ne sauraient appartenir à la juridiction Française.

"'Attendu que la demande ne tend pas seulement à faire valider des saisies-arrêts pratiquées sur des marchandises appartenant au gouvernement Égyptien, soit à Méhémet-Ali personnellement, mais d'abord et avant tout, préjudiciablement, à obtenir contre ce gouvernement la somme de 100,000 francs de dommages-intérêts.

"'Reçoit S. A. Méhémet-Ali opposant au jugement rendu par défaut, le 25 Août 1846, et faisant droit, déclare ledit jugement non avenu;

"'Se déclare incompétent sur la demande introduite par M. Solon, et le condamne aux dépens.'"
APPENDIX VII. PART VI. CHAP. II. PAGE 155.

RIGHTS OF AMBASSADORS.

No. 1.

"An Act for preserving the Privileges of Ambassadors, and other publick Ministers of foreign Princes and States (a).

"Whereas several turbulent and disorderly persons having in a most outrageous manner insulted the person of His Excellency Andrew Artemonowitz Mattueof, Ambassador Extraordinary of His Czarish Majesty, Emperor of Great Russia, Her Majesties good friend and ally, by arresting him, and taking him by violence out of his coach in the publick street, and detaining him in custody for several hours, in contempt of the protection granted by Her Majesty, contrary to the law of nations, and in prejudice of the rights and privileges which ambassadors and other publick ministers, authorized and received as such, have at all times been thereby possessed of, and ought to be kept sacred and inviolable; be it therefore declared by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in Parliament assembled, and by the authority of the same, That all actions and suits, writs, and processes commenced, sued, or prosecuted against the said ambassador, by any person or persons whatsoever, and all bail bonds given by the said ambassador, or any other person or persons on his behalf, and all recognizances of bail given or acknowledged in any such action or suit, and all proceedings upon or by pretext or colour of any such action or suit, writ or process, and all judgments had thereupon, are utterly null and void, and shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever.

"II. And be it enacted by the authority aforesaid, that all entries, proceedings, and records against the said ambassador, or his bail, shall be vacated and cancelled.

"III. And to prevent the like insolences for the future, be it further declared by the authority aforesaid, 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

(a) 7 Anne, cap. 12.
APPENDIX VII.

"servant of any such ambassador, or other publick minister, may be
"arrested or 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.

"IV. And be it further enacted by the authority aforesaid, that
"in case any person or persons shall presume to sue forth or pro-
"secute any such writ or process, such person and persons, and all
"attorneys and solicitors prosecuting and soliciting in such case,
"and all officers executing any such writ or process, being thereof
"convicted, by the confession of the party, or by the oath of one or
"more credible witness or witnesses, before the Lord Chancellor, or
"Lord Keeper of the Great Seal of Great Britain, the Chief Justice
"of the Court of Queen's Bench, the Chief Justice of the Court of
"Common Pleas for the time being, or any two of them, shall be
"deemed violaters of the laws of nations, and disturbers of the
"publick repose, and shall suffer such pains, penalties, and corporal
"punishment, as the said Lord Chancellor, Lord Keeper, and the
"said Chief Justices, or any two of them, shall judge fit to be im-
"posed and inflicted.

"V. Provided, and be it declared, that no merchant or other
"trader whatsoever, within the description of any of the statutes
"against bankrupts, who hath or shall put himself into the service
"of any such ambassador or publick minister, shall have or take
"any manner of benefit by this Act.

"VI. And that no person shall be proceeded against as having
"arrested the servant of an ambassador or publick minister, by
"virtue of this Act, unless the name of such servant be first regis-
tered in the office of one of the principal secretaries of state, and
"by such secretary transmitted to the sheriffs of London and
"Middlesex for the time being, or their under sheriffs or deputies,
"who shall, upon the receipt thereof, hang up the same in some
"publick place in their offices, whereto all persons may resort, and
"take copies thereof without fee or reward.

"VII. And be it further enacted by the authority aforesaid, that
"this Act shall be taken and allowed in all Courts within this king-
dom as a publick Act; and that all Judges and Justices shall take
"notice of it without special pleading; and all sheriffs, bailiffs, and
"other officers and ministers of justice, concerned in the execution
"of process, are hereby required to have regard to this Act, as they
"will answer the contrary at their peril."
No. 2.

_Memoir of the French Minister (1772) on the Privileges of Ambassadors._

"NO. III.

"Mémoire que le Ministre de France fit remettre aux Ambassadeurs et Ministres étrangers résidant à Paris, en Février 1772 (b).

"L’immunité des ambassadeurs et autres ministres publics, est fondée sur deux principes: (1) sur la dignité du caractère représentatif auquel ils participent plus ou moins; (2) sur la convention tacite qui résulte de ce qu’en admettant un ministre étranger, on reconnaît les droits que l’usage, ou, si l’on veut, le droit des gens lui accorde.

"Le droit de représentation les autorise à jouir, dans une mesure déterminée, des prérogatives de leurs maîtres. En vertu de la convention tacite, ou, ce qui est la même chose, en vertu du droit des gens, ils peuvent exiger qu’on ne fasse rien qui les trouble dans leurs fonctions publiques.

"L’exemption de la juridiction ordinaire, qu’on appelle proprement immunité, découle naturellement de ce double principe. Mais l’immunité n’est point illimitée; elle ne peut s’étendre qu’en proportion des motifs qui lui servent de base.

"Il résulte de là, (1) qu’un ministre public ne peut en jouir qu’autant que son maître en jouirait lui-même;

"(2) Qu’il ne peut en jouir dans le cas où la convention tacite entre les deux souverains vient à cesser.

"Pour éclairer ces maximes par des exemples analogues à l’objet de ces observations, on remarquera:

"(1) Qu’il est constant qu’un ministre perd son immunité, et se rend sujet à la juridiction locale, lorsqu’il se livre à des manœuvres qui peuvent être regardées comme crime d’État, et qui troublent la sécurité publique. L’exemple du Prince de Cellamare constate ces maximes à cet égard.

"(2) L’immunité ne peut avoir d’autre effet que d’écartier tout ce qui pourrait empêcher le ministre public de vaquer à ses fonctions.

"De là, il résulte que la personne seule du ministre jouit de l’immunité, et que ses biens pouvant être attaqués sans interrompre ses fonctions, tous ceux qu’un ministre possède dans le pays où il est accrédité, sont soumis à la puissance territoriale, et c’est par une suite de ce principe, qu’une maison ou une rente

(b) _De Martens, Causes Célèbres_, t. ii. p. 112.
qu'un ministre étranger posséderait en France, seraient sujettes aux mêmes lois que les autres héritages ;

'' (3) La convention tacite sur laquelle l'immunité se fonde, cesse lorsque le ministre se soumet formellement à l'autorité locale, en contractant par-devant un notaire, c'est-à-dire en invoquant l'autorité civile du pays qu'il habite.

'' Wicquefort qui, de tous les auteurs, est le plus zélé pour la "défense du droit des ministres publics, et qui s'y livrait avec d'autant plus de chaleur qu'il défendait sa propre cause, convient de ce principe et avoue :

'' Que les ambassadeurs peuvent être forcés de remplir les contrats qu'ils ont passés par-devant notaire, et qu'on peut saisir leurs meubles pour prix de loyer des maisons, dont les baux auraient été passés de cette manière. (T. I. p. 416.)

'' (4) L'immunité étant fondée sur une convention, et tout convention étant réciproque, le ministre public perd son privilège lorsqu'il en abuse contre les intentions constantes de deux souverains.

'' C'est par cette raison qu'un ministre public ne peut pas se prévaloir de son privilège pour se dispenser de payer les dettes qu'il peut avoir contractées dans les pays où il réside :

'' (1) Parceque l'intention de son maître ne peut point être qu'il viole la première loi de la justice naturelle, qui est antérieure aux privilèges du droit des gens ;

'' (2) Parce qu'aucun souverain ne veut, ni ne peut vouloir que ces prérogatives tourment au détroment de ses sujets, et que le caractère public devienne pour eux un piège et un sujet de ruine ;

'' (3) On pourrait saisir les biens mobiliers du prince même que le ministre représente, s'il en possédait sous notre juridiction de quel droit les biens du ministre seraient-ils donc exceptés de cette règle ?

'' (4) L'immunité du ministre public consiste essentiellement à le faire considérer comme s'il continuait à résider dans les États de son maître.

'' Rien n'empêche donc d'employer vis-à-vis de lui les moyens de droit dont on userait s'il se trouvait dans le lieu de son domicile ordinaire.

'' (5) In en résulte qu'on peut le sommer d'une manière légale, de satisfaire à ses engagemens et de payer ses dettes, et Bynkershoek décide formellement, p. 186, que ce n'est pas peu respecter la maison d'un ambassadeur que d'y envoyer des officiers de justice, pour signifier ce dont il est besoin de donner connaissance à l'ambassadeur.

'' (6) Le privilège des ambassadeurs ne regarde que les biens qu'ils possèdent comme ambassadeurs, et sans lesquels ils ne pourraient exercer les fonctions de leur emploi.

'' Bynkershoek, p. 168 et 172, et Barbeyrac, p. 173, sont de cet
"avis, et la cour de Hollande a adopté cette base dans l’ajournement qu’elle fit signifier en 1721 à l’envoyé de Holstein, après avoir accordé saisi de tous ses biens et effets, autres que meubles et équipages, et autres choses appartenant à son caractère de ministre.—Ce sont les termes de la Cour de Hollande du 21 Février 1721.

"Ces considérations justifient suffisamment la règle qui est reçue dans toutes les cours, qu’un ministre public ne doit point partir d’un pays sans avoir satisfait ses créanciers.

"Lorsqu’un ministre manque à ce devoir, quelle est la conduite à tenir ? c’est la seule question essentielle que la matière puisse faire naître. Elle doit se décider par un usage conforme aux différentes maximes qu’on a établies ci-dessus.

"On ne parlera point de l’Angleterre, où l’esprit de la législation, borné à la lettre de la loi, n’admet point de convention tacite, ni de présomption, et où le danger d’une loi positive dans une matière aussi délicate, a jusqu’ici empêché de fixer légalement les prérogatives des ministres publics.

"Dans toutes les autres cours, la jurisprudence parait à peu près égale, les procédés seuls peuvent différer.

"À Vienne, le maréchalat de l’empire s’arroge, sur tout ce qui ne tient pas à la personne de l’ambassadeur et à ses fonctions, une juridiction proprement dite, dans une étendue qu’on a quelquefois envisagée difficile à concilier avec les maximes généralement reçues. Ce tribunal veille d’une manière particulière sur le paiement des dettes contractées par les ambassadeurs, surtout au moment de leur départ.

"On en a vu l’exemple, en 1764, dans la personne de M. le Comte de Czernicheff, ambassadeur de Russie, dont les effets furent arrêtés jusqu’à ce que le Prince de Liechtenstein se fût rendu sa caution.

"En Russie un ministre public est assujetti à annoncer son départ par trois publications. On y arrête les enfants, les papiers et les effets de M. de Bausset, ambassadeur de France, jusqu’à ce que le roi eut fait son affaire des dettes que ce ministre avait contractées.

"À la Haye, le conseil de Hollande s’arroge une juridiction proprement dite dans les États où les intérêts des sujets se trouvent compromis.

"En 1688 un exploit fut signifié à un ambassadeur d’Espagne en personne, qui en porta des plaintes (Bynkershoek, p. 188) ; les États jugèrent qu’elles étaient fondées, en ce qu’il n’aurait fallu remettre l’exploit qu’aux gens de l’ambassadeur.

"À Berlin, en 1723, le Baron de Posse, ministre de Suède, fut arrêté et gardé, parce qu’il refusait de payer un sellier, malgré les avertissements réitérés du magistrat.

"À Turin, le carrosse d’un ambassadeur d’Espagne fut arrêté
sous le règne d’Emmanuel. La cour de Turin se disculpa à la
vérité de cette violence; mais personne ne réclama contre les
procédures qui avaient été faites pour condamner l’ambassadeur
à payer ses dettes.

' Ces exemples paraissent suffire pour établir en principe qu’un
ministre étranger peut-être contraint à payer ses dettes. Ils
constatent même l’extension qu’on a quelquefois donnée au droit
de coaction.

On a soutenu qu’il suffisait d’avertir le ministre de payer ses
dettes pour justifier, en cas de refus, les voies judiciaires et même
la saisie des effets.

' Grotius, liv. ii. chap. 18. dit: que si un ambassadeur a
contracté des dettes et qu’il n’ait point d’immuebles dans le pays,
il faut lui dire honnêtement de payer; s’il le refusait, on s’adress-
serait à son maître, après quoi on en viendrait aux voies que l’on
prend contre les débiteurs qui sont d’une autre juridiction.

Or ces voies sont les procédures légales qui tombent sur les
biens de l’ambassadeur, autres que ceux qui sont immédiatement
nécessaires à l’exercice de ses fonctions, ainsi qu’on l’a déjà
observé.

L’opinion la plus modérée est, qu’il convient dans tous les
cas de s’abstenir, autant qu’il est possible, de donner atteinte à
la décence qui doit environner le caractère public; mais le
souverain est autorisé à employer l’espèce de coaction qui n’em-
porte aucun trouble dans ses fonctions, et qui consiste à inter-
dire à l’ambassadeur la sortie du pays, avant qu’il ait satisfait à
ses engagements.

C’est dans ce sens que Bynkershoek conseille d’employer con-
tre les ambassadeurs des actions qui emportent plus une défense
qu’une ordre de faire telle ou telle chose. Ce n’est alors qu’une
simple défense, et personne n’oserait soutenir qu’il soit illicite
de se défendre contre un ambassadeur, qui ne doit pas troubler
les habitants en usant de violence et emportant ce qui appartient
à autrui.

Cette maxime est encore plus de saison, lorsque des circon-
stances particulières et aggravantes chargent le ministre du re-
proche de mauvaise foi et de manœuvres reprehensibles.

Lorsqu’il viole lui-même ainsi la sainteté de son caractère et
la sécurité publique, il ne peut point exiger que d’autres le re-
spectent.

Pour appliquer ces maximes au cas particulier de M. le Baron
de Wrech, ministre plénipotentiaire du Landgrave de Hesse-
Cassel, il suffit de rappeler sa conduite depuis son arrivée à Paris,
et surtout depuis huit mois.

Les voies indécentes qu’il avait adoptées pour se procurer de
l’argent, ayant été supprimées, il s’est livré à toutes sortes de
manœuvres, que les ménagements qu'on a pour son caractère 
empêchent de caractériser.

"On se contentera de remarquer, que tout conduit à penser que 
ce ministre a formé le dessein de frustrer ses créanciers en 
sortant du royaume; et cette circonstance suffit pour autoriser 
à prendre contre lui les mêmes mesures qu'on prendrait, s'il était 
effectivement sorti du royaume, après avoir déposé son caractère 
pour la remise de ses lettres de rappel.

"Le ministère des affaires étrangères l'a fait exhorter par le 
magistrat chargé de la police, et l'a exhorté lui-même, à faire 
honneur à ses engagements.

"Dès-lors les poursuites qu'on pouvait faire contre lui deve-
naient légitimes, pourvu qu'elles ne passassent pas les bornes 
indiquées plus haut.

"Le Marquis de Bezons se trouvait même dans un cas plus 
particulier; le Baron de Wrench avait contracté avec lui par écrit; 
il avait promis de fournir caution bourgeoise pour l'exécution du 
bail de la maison. Le Baron de Wrench avait donc contracté 
l'engagement d'assujettir indirectement cette exécution à la juri-
diction territoriale dans la personne de sa caution. Il est vrai 
qu'il n'a pas jugé à propos de remplir cette obligation; mais 
comme il est assurément le garant de son propre fait, le Marquis 
de Bezons pouvait, selon les règles de l'équité et du bon sens, 
s'en prendre à lui-même; et il ne peut-être admis à se faire un 
titre de la mauvaise foi même qui caractérise le refus d'exécuter 
cette clause de la convention.

"C'est d'après ces considérations que, sur les plaintes multi-
pliées des créanciers du Baron de Wrench, le ministre des affaires 
étrangères crut devoir suspendre l'expédition du passeport que ce 
ministre demanda pour sortir du royaume, en alléguant des 
ordres du Landgrave son maître, jusqu'à ce que les intentions de 
ce prince fussent connues par le canal du ministre qui réside de 
la part du roi auprès de lui.

"Il permet en même temps au Marquis de Bezons de faire 
valoir ses droits par les voies légales, et il en prévint le Baron de 
Wrench.

"Ce ministre s'étant néanmoins plaint qu'on s'était prévalu de 
la permission pour forcier sa porte, pour lui signifier l'exploit 
de la vente de ses meubles, et tout acte de violence devant être 
banni des procédés en pareil cas, on n'a pu s'empêcher de blâmer 
cet excès, et on a cru devoir suspendre toute poursuite ultérieure.

"Mais, afin de concilier la protection que le roi doit à ses sujets, 
avec les égards dus au caractère public, et afin de remplir tous 
les procédés que les règles du droit des gens peuvent dicter, le 
ministère des affaires étrangères vient de délicher au Landgrave 
lui-même la conduite de son ministre.

"Ce prince pourra d'autant moins trouver à redire à la conduite
qui a été tenue avec son ministre, qu’un fait récent a mis en évidence le sentiment qu’il avait lui-même sur l’immunité. Il fit en effet emprisonner, il y a quatre ou cinq ans, le Comte de Wartensleben, ministre de Hollande, pour le forcer de rendre compte d’une fondation dont il était l’exécuteur. L’entreprise sur la personne d’une ministre public fut la verité condamnée ; mais les États généraux ne contestèrent pas la juridiction du Landgrave ; et, dans le cas où se trouve le Baron de Wrech, les principes que ce prince a soutenus, ne lui permettront pas de soustraire son ministre aux mesures capables d’assurer les droits des sujets du roi, ni de les priver du seul gage qu’ils aient de l’exécution de leurs conventions avec lui.’

La ‘Gazette de France’ ayant publié ce mémoire dans une de ses feuilles, le Baron de Wrech en porta plainte au Duc d’Aiguillon ; qui toutefois se contenta de lui faire la réponse suivante.

*NO. IV.*

*Lettre du Duc d’Aiguillon au Baron de Wrech, ministre de Hesse-Cassel à la cour de France ; du 23 Janvier 1772.*

‘Je ne perds pas un moment, Monsieur, pour répondre à la lettre que vous m’avez fait l’honneur de m’écrire le 22 de ce mois. C’est avec une peine bien vive que j’apprends que l’on a inséré dans la gazette de... un écrit relatif à votre position et qui vous soit injurieux. Je m’empresse, Monsieur, de vous déclarer que je désavoue tout ce qu’on peut avoir publié sur cette affaire, qui par sa nature et par les mesures que le roi a jugé à propos de prendre doit être tenue secrète. Je ne puis donc qu’apprécier au parti que vous avez pris de demander justice contre la publicité donnée à cette affaire, et vous prie d’agréer l’assurance de ma haute considération.’

‘Versailles, le 23 Février 1772.’

*‘Le Duc d’Aiguillon.’*

‘Ce ne fut que lorsque le Landgrave de Hesse-Cassel eût fait son affaire des engagements pris par le Baron de Wrech, que celui-ci obtint ses passeports, et put quitter Paris.’
Jan. 31, 1864.

"An action having been brought against a foreign minister and other co-contractors, the minister entered an appearance, and allowed the action to proceed till issue joined, and got a rule for a special jury. He then applied to the Court to stay all proceedings against him, on the ground that he was exempt from suit in this country; but the Court refused to do so (as he had not been interfered with in his person or his goods), on the ground that he had attended to the jurisdiction by his voluntary appearance.

"A secretary and councillor of legation of a foreign Sovereign, appointed by him, and having charge of the executive of the legation, and acting in the absence of the ambassador as chargé-d'affaires, is a public minister to whom the privileges of ambassadors apply.

"A foreign ambassador does not lose his privilege of exemption from suit, by trading in this country, although his domestic servants do, under the limitation in the 7 Anne, c. 12, s. 5.

"Quare.—Whether an ambassador can be brought unwillingly into the Courts of this country by process not affecting either his person or his goods."

---

**APPENDIX VII.**

No. 3.

**Ambassador — Civil Jurisdiction, &c.**

TAYLOR v. BEST, DROUET, AND SPERLING (c).

**Ambassador — Secretary of Legation — Privilege — Exemption from Suit — Attorning to Jurisdiction — Stay of Proceedings.**

"This action was brought against the defendants as directors of a society formed in Belgium and London for working the Royal Nassau Sulphate of Barytes Mines, to recover deposits paid by the plaintiff on shares in the said society. Before the writ issued in June 1853, M. Drouet, who was Secretary of Legation of the King of the Belgians, instructed his attorney to write to the attorney for the plaintiff, to ask if a writ was to be issued, and if it was, to direct that it should be sent to him; and after the writ was issued M. Drouet directed his attorney to enter an appearance, which he did accordingly. M. Drouet was abroad from June till the beginning of December on the duties of his office, and in the mean time the action proceeded. M. Drouet pleaded the general issue by his attorney. Notice of trial was given for the 20th of December, and a special jury was obtained on the application of M. Drouet. On M. Drouet's return to England in December, his attorney took out a summons to stay all proceedings, or to strike out his name from the proceedings in the action, on the ground of his privilege as a public minister. The summons was heard before Talhouard, J., who ordered proceedings to be stayed till the 5th day of the next term.

"Willes (Jan. 12) moved for a rule nisi, on behalf of M. Drouet, upon affidavits of the foregoing facts, calling on the plaintiff and the other defendants to show cause why all the proceedings should not be set aside, or further proceedings stayed, or M. Drouet's name struck out; or if the rule should not be made absolute, why M. Drouet should not be at liberty to withdraw his plea, and plead his privilege as a public minister.

(c) Law Journal, vol. xxiii. p. 89. (Common Pleas.)
"The Court having granted a rule nisi, Montagu Chambers and Pearson (Jan. 30) showed cause.

"Byles, Serj., appeared for the defendant Best, and objected to the striking out of Drouet's name.

"Hannen showed cause for the defendant Sperling. 'M. Drouet is not entitled to have his name struck out in this action.'

"Judgment was delivered as follows:—

"Jervis, C. J.—'I am of opinion that the rule in this case ought to be discharged. There is no doubt that the defendant M. Drouet fills the office of a public minister, such as the privilege contended for will attach to; and I think it equally clear that if the privilege do attach, as it undoubtedly does attach to the character of minister, it is not, in the case of a minister, interfered with or abandoned by the circumstance of trading, as it would be if the claim were set up in respect of the privileges of a servant of the ambassador, under the statute of Anne. If an ambassador or minister violate the character in which he is delegated to this country, by entering into commercial transactions, that raises a question between the country to which he is sent and the country from which he is sent; but he does not thereby lose any privilege to which he may be entitled, the privilege being a general privilege, and the limitation attached to the privilege, by reason of trading, being confined by the statute of Anne to the case of servants of the ambassador, — who may lose the privilege. I am reminded that the case referred to, Barbuit's case, in the time of Lord Chancellor Talbot, is an authority on that subject. Admitting, therefore, that the applicant in this case is a person entitled to the general privilege, which he has not lost by any trading transactions into which he may have entered,—if such be established to the satisfaction of the Court,—the question is, whether he is entitled, under all the circumstances of the case, to the privilege which he now claims. Now, although it is admitted that no process against person or goods can be available against the person or goods of an ambassador or minister, no case has been cited to show that an application like this, to stay all the proceedings in an action against such a person, is available in the Courts of this country. On the contrary, it appears on examination, that in the case of servants,—and the same principle must apply with reference to ministers,—the practice has been, not to stay all proceedings, but to relieve the person of the servant from the vexation of service of process, or of bail; and the applications have hitherto been,—as far as I can understand them,—where the party has been arrested, to discharge him from the arrest on entering a common appearance. The case of Crosse v. Talbot (d) recognises the old principle. That was a motion, on

(d) 8 Mod. 288.
APPENDIX VII.

"behalf of the defendant, to set aside a bail-bond given upon his 
"arrest, and that common bail might be accepted for him; and he 
"obtained a rule to show cause: and the rule was afterwards dis- 
"charged, on the ground that he did not bring himself strictly 
"within the privilege as the servant of an ambassador. The Court 
"held, that to be privileged he ought to be a domestic servant, and 
"really to exercise the duties of his office, and that his being a mere 
"nominal servant was not sufficient." The reporter adds, "A great 
"many cases have since been determined upon the same principle; 
"but it was in those cases held, that the idea of a domestic servant 
"was not confined to his living in a foreign minister's house, pro- 
"vided he was a real servant, and actually performed the service."

"Therefore," the reporter states, "as far as his knowledge went, a 
great many cases had been determined on that kind of application, 
which was not to stay all proceedings, but to discharge a bail- 
bond on entering a common appearance, so as to let the proceed- 
ings go on. I mention this, not with reference to the general 
principle of the case, but with respect to the form of application.

"No case has been produced to the Court of an application where 
the personal liberty of the defendant has not been interfered with; 
and, further, I am not aware of any case in which, an action 
having been brought against several defendants—after the case 
has advanced, as this has done, up to the time of trial—it has 
been allowed, upon the application of one defendant, to stay all 
proceedings. If that were permitted, it would follow that all the 
other defendants having been put to considerable expense, pro- 
ceedings would have to be begun de novo, and what had been 
expended in the progress of the suit would become utterly useless. 
It is sufficient to say that I am not aware of any such application 
having been made. But, apart from the form of this motion, it 
seems to me that this rule should be discharged upon the merits 
of the case. It is an action against four defendants; the writ 
was sued out against M. Drouet, as one of four joint contractors. 
There is no doubt that the plaintiff was bound in the first in- 
stance to sue them all, or he would have been subject to a plea 
in abatement, and the other defendants would have contested the 
point of jurisdiction, without minding whether Drouet was the 
subject of the suit or not. The writ being issued, nothing is 
done to interfere with the free exercise of the minister's functions, 
or with his comfort or dignity in this country; but knowing or 
apprehending that a writ is to be issued, he gives instructions to 
an attorney in whom he has confidence to write to the attorney 
for the plaintiff, to ask if a writ is to be issued, and if it is, then 
to beg that it may be sent to him. He, therefore, solicits the 
action against him; and voluntarily entering an appearance, he 
voluntarily submits to the jurisdiction of the Court. Now, it 
seems to me that, under these circumstances, the defendant
APPENDIX VII.

"(Drouet) cannot now be allowed to complain that a suit has been instituted against him.

"It is contended, and perhaps it is undoubted, that an ambassador or minister has a privilege from suit, or, at all events, from such suits as ultimately result in the taking of his person, or of his goods necessary for his state or comfort; and that he cannot be compelled, in invitum or involuntarily, to enter into litigation in a country in which he is resident; but it is admitted by all the foreign jurists, that where suits can be founded without attacking the personal liberty or comfort, or interfering with the personal privileges of the individual, they may proceed. Various passages have been cited to show that in countries where the Civil Law prevails, and where jurisdiction can be founded by a proceeding in rem in the first instance, the action may proceed where there are houses or land, that are immovable, and may be taken to found the jurisdiction. All movable goods, too, which are unconnected with the comfort or dignity of the minister may be taken for that purpose. When we consider the effect of such proceeding, and what may be done in such case by a minister if he pleases, there seems to be little distinction between that proceeding and the present; because, although it is perfectly true that where the Civil Law prevails, you may proceed by attachment or writ, and incidentally establish the means of litigation between the parties, without interfering with the person of the defendant, yet if the defendant choose, either for the purpose of protecting his goods, or of investigating the question in dispute, to appear, the suit, which was originally in rem, is turned into one in personam; and it is a daily practice in Scotland, that goods, which were originally taken for the mere purpose of founding the jurisdiction, are held as a pledge or security for the fruits of the judgment, if judgment be ultimately obtained. If, therefore, you have a right in Holland or elsewhere, by taking goods, to found jurisdiction, and a minister may come in if he please, and turn the suit into a suit in personam, he could not then object to the jurisdiction of the Courts. It seems to me that there is no distinction between that case and the case now before us, where the writ was not even served upon the defendant, and where no step was taken to interfere with his person or to disturb his comfort, but where a writ was issued to which he voluntarily appeared, submitting himself to the jurisdiction of the Court. I am not affected by what was so strongly urged in the course of the argument, namely, that the privilege, being the privilege of the Sovereign, cannot be abandoned by the minister; because when the authorities referred to come to be examined, they do not show that a minister may not submit to the jurisdiction for the purpose of having the matter in dispute investigated; but that the sacred character of the person of the ambassador
cannot be abandoned by his own voluntary act, and that by
interfering with his person or taking the goods necessary to his
position, you interfere with the privilege of his master. But
that is not the case here. For aught that appears here, M. Drouet
was sued only for the purpose of ascertaining the liability of
others, he being a necessary party to the action. If he had
not chosen to take the step by which he attorned to the jurisdic-
tion of this Court, the case might have gone on to judgment,
and nothing might have been done in execution to affect him.
If, as the fruits of the judgment, a ca. sa. or fi. fa. had been issued
against him, then, of course, the statute of Anne would have
applied, and this Court would have interfered to protect him.
It seems to me, therefore, under these circumstances, that this
Court ought not to interfere on behalf of a party who has sub-
mitted to the jurisdiction, and, in fact, courted it.'

'Maule, J.—I think, on the ground that M. Drouet has
appeared in this action, and allowed it to go through certain
stages, this application ought to fail. It is a grave question
whether an ambassador, or public minister—which M. Drouet
undoubtedly is—is so far protected as not to be liable in any
manner, supposing him to object to the jurisdiction. That ques-
tion is not decided by any legal determination in this country,
nor, as far as judicial determinations go, do we find it so deter-
mined elsewhere. With respect to mere cases in which a special
application was made under the 5th section of the statute of
Anne, they were cases in which servants of ambassadors who
had been sued and arrested were discharged on common bail.
Now, there is a great distinction between an ambassador and
the domestic servant of an ambassador. The ambassador has a
privilege; and the privilege of his domestic servant is not the pri-
vilege of the servant himself, but of the ambassador, and is based
on the ground that the arrest of the domestic servant might inter-
fere with the comfort or state of the ambassador. Where these are
not interfered with at all, the ambassador is not interfered with by
the suit; and the servant has no privilege except that which arises
from the privilege of the ambassador. It is an important point,
and one fit to be very gravely considered when it fairly arises,
whether an ambassador is liable to be sued by process not affect-
ing his person or his goods; whether by such a process he can
be brought, unwillingly, into the Courts of this country, and
have his rights determined on, perhaps even so as to interfere
with his comfort. A man could not stand by and without care
allow a suit to be determined on which the decision would be bind-
ing upon him; and, therefore, it may well be questioned whether
the privilege of the ambassador is not as extensive as the text of
Blackstone alleges it to be. But it is not necessary to decide
that point in the present case, because, whatever the extent of
"the privilege may be, I think where a person voluntarily appears "in an action, and allows it to go on without interposing, to an "advanced stage, and where there has been no interference with "his person or property, and where the action may be carried out "with full effect, without interfering at all with such person,—to "such a case as that, I think we should do wrong to extend the "privilege of ambassadors. I, therefore, agree with my Lord "Chief Justice, that this rule should be discharged.'

"Cresswell, J.—'I agree with the opinion of my Brother Maule, "and for the reasons which he has assigned.',

"Williams, J., concurred.

" Rule discharged."

No. 4.

THE EMPEROR OF BRAZIL v. ROBINSON AND OTHERS (e).

"Martin shewed cause against the rule nisi obtained by W. H. "Watson, for compelling the plaintiff to find security for costs, on "the ground of his being resident abroad. He cited The Duke "de Montellano v. Christin. That was an application to compel "the plaintiff to give security for costs. He was the Ambassador "from the Court of Spain. There Lord Ellenborough said—'Con-"sidering that an ambassador is the immediate representative of "the crowned head whose servant he is, it would hardly be respect-"ful in the first instance to exact such a security, unless there "were pregnant reasons for believing it to be necessary.' The "ground therefore on which the opinion of the Court in that case "proceeded was, that the Ambassador was the representative of a "crowned head. The Court would not compel that representative "to find security for costs, and therefore, à fortiori, would not the "Court compel the crowned head itself to find security for costs. "The present rule must, therefore, be discharged.

"W. H. Watson, in support of the rule, contended that the case "cited on the other side was perfectly distinguishable from the "present. There, the Spanish Ambassador was resident within the "jurisdiction of the Court, and there was no suggestion in the "affidavits, on which the application was founded, that the plaintiff "was about to remove from the jurisdiction. Here, however, the "plaintiff was entirely out of the jurisdiction, and therefore no "reason existed for placing him in a better situation than any other "plaintiff who was resident abroad.

"Williams, J.—'If the ambassador could not be compelled to "find security for costs, I do not see how I can compel his Sove-"
"reign to find such security. I do not, therefore, think I am
authorised to interfere by compelling the plaintiff to find security
for costs. The present rule must, therefore, be discharged. If it
is desired, the application may be renewed in the full Court.'
"Rule discharged."

"W. H. Watson afterwards renewed his application in the full
Court, and stated that it appeared from the affidavits on which
he moved, that the action was on a charter-party, for not duly
delivering certain wood shipped by the Emperor from Brazil to
this country. His Imperial Majesty, therefore, having engaged in
commerce, must be subjected to the same liabilities as any other
commercial person. If the proceeding had been in respect of any
matter connected with his political rank, the case might have been
different.

"Martin showed cause in the first instance, and again cited the
Duke de Montellano v. Christin.

"Lord Denman, C.J.—' I think that the case cited in opposition
to this application is clearly distinguishable from the present.
There, the ambassador was in this country merely in his political
capacity, and there was no reason to suppose that he was desirous
of leaving the country, or going out of the jurisdiction. Here,
however, the Emperor appears to have engaged in a commercial
transaction, and to be resident out of the jurisdiction. I see no
reason, therefore, for exempting him from the necessity of finding
security for costs, to which any other person bringing such an
action would be subjected. The present rule must consequently
be made absolute.'

"Rule absolute."

No. 5.

LAW OF UNITED STATES OF NORTH AMERICA (f).

"§ 1525. Under the confederation, an exclusive power was given
to Congress of ' sending and receiving ambassadors.' The term
'ambassador,' strictly construed, (as would seem to be required
by the second article of that instrument,) comprehends the
highest grade only of public ministers; and excludes those grades
which the United States would be most likely to prefer whenever
foreign embassies may be necessary. But under no latitude
of construction could the term 'ambassadors' comprehend
consuls. Yet it was found necessary by Congress to employ the

(f) Story on the Constitution of the United States (Amer. 2nd Edit.),
voll. ii. pp. 356 et seq.
inferior grades of ministers, and to send and receive consuls.

It is true, that the mutual appointment of consuls might have been provided for by treaty; and where no treaty existed, Congress might perhaps have had the authority under the ninth article of the confederation, which conferred a general authority to appoint officers for managing the general affairs of the United States. But the admission of foreign consuls into the United States, when not stipulated for by treaty, was nowhere provided for. The whole subject was full of embarrassment and constitutional doubts; and the provision in the Constitution, extending the appointment to other public ministers and consuls, as well as to ambassadors, is a decided improvement upon the Confederation.

§ 1560. The next section of the second article is: 'He (the President) shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and, in case of a disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.'

§ 1565. The next power is to receive ambassadors and other public ministers. This has been already incidentally touched. A similar power existed under the Confederation; but it was confined to receiving 'ambassadors,' which word, in a strict sense, (as has been already stated,) comprehends the highest grade only of ministers, and not those of an inferior character. The policy of the United States would ordinarily prefer the employment of the inferior grades; and therefore the description is properly enlarged, so as to include all classes of ministers. Why the receiving of consuls was not also expressly mentioned, as the appointment of them is in the preceding clause, is not easily to be accounted for, especially as the defect of the Confederation on this head was fully understood. The power, however, may be fairly inferred from other parts of the Constitution; and indeed seems a general incident to the executive authority. It has constantly been exercised without objection; and foreign consuls have never been allowed to discharge any functions of office until they have received the exequatur of the President. Consuls, indeed, are not diplomatic functionaries, or political representatives, of a foreign nation; but are treated in the character of mere commercial agents.

§ 1568. As incidents to the power to receive ambassadors and foreign ministers, the President is understood to possess the power...
APPENDIX VII.

"to refuse them, and to dismiss those who, having been received, "become obnoxious to censure, or unfit to be allowed the privilege, "by their improper conduct, or by political events. While, however, "they are permitted to remain as public functionaries, they are "entitled to all the immunities and rights which the Law of Nations "has provided at once for their dignity, their independence, and "their inviolability.

"§ 1569. There are other incidental powers belonging to the "executive department, which are necessarily implied from the "nature of the functions which are confided to it. Among these "must necessarily be included the power to perform them without "any obstruction or impediment whatsoever. The President can- "not, therefore, be liable to arrest, imprisonment, or detention, "while he is in the discharge of the duties of his office; and for "this purpose his person must be deemed, in civil cases at least, "to possess an official inviolability. In the exercise of his political "powers he is to use his own discretion, and is accountable only "to his country and to his own conscience. His decision in rela- "tion to these powers is subject to no control, and his discretion, "when exercised, is conclusive. But he has no authority to con- "trol other officers of the Government in relation to the duties "imposed upon them by law, in cases not touching his political "powers.

"§ 1658. The next clause extends the judicial power 'to all "cases affecting ambassadors, other public ministers, and consuls.' "The propriety of this delegation of power to the national judiciary "will scarcely be questioned by any persons, who have duly re- "flected upon the subject. There are various grades of public "ministers, from ambassadors (which is the highest grade) down "to common resident ministers, whose rank, and diplomatic pre- "cedence, and authority, are well known, and well ascertained in "the law and usages of nations. But whatever may be their "relative rank and grade, public ministers of every class are the "immediate representatives of their sovereigns. As such representa- "tives, they owe no subjection to any laws, but those of their own "country, any more than their Sovereign; and their actions are "not generally deemed 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. But public ministers "ought, in order to perform their duties to their own Sovereign, "to be independent of every Power, except that by which they are "sent; and, of consequence, ought not to be subject to the mere "municipal law of that nation wherein they are to exercise their "functions. The rights, the powers, the duties, and the privileges "of public ministers are, therefore, to be determined, not by any "municipal constitutions, but by the law of nature and nations, which
is equally obligatory upon all Sovereigns and all States. What
these rights, powers, duties, and privileges are, are inquiries pro-
perly belonging to a treatise on the Law of Nations, and need not
be discussed here. But it is obvious, that every question, in
which these rights, powers, duties, and privileges are involved, is
so intimately connected with the public peace, and policy, and
diplomacy of the nation, and touches the dignity and interest of
the Sovereigns of the ministers concerned so deeply, that it would
be unsafe that they should be submitted to any other than the
highest judicature of the nation.

" § 1659. It is most fit that this judicature should, in the first
instance, have original jurisdiction of such cases, so that, if it
should not be exclusive, it might at least be directly resorted to,
when the delays of a procrastinated controversy in inferior tri-
bunals might endanger the repose or the interests of the Govern-
ment. It is well known that an arrest of the Russian Ambassador
in a civil suit in England, in the reign of Queen Anne, was well
nigh bringing the two countries into open hostilities; and was
atoned for only by measures which have been deemed, by her
own writers, humiliating. On that occasion, an Act of Parlia-
ment was passed, which made it highly penal to arrest any
ambassador, or his domestic servants, or to seize or distress his
goods; and this Act, elegantly engrossed and illuminated, ac-
accompanied by a letter from the Queen, was sent by an
ambassador extraordinary, to propitiate the offended Czar. And
a statute to the like effect exists in the criminal code established
by the first Congress, under the Constitution of the United
States.

" § 1660. Consuls, indeed, have not in strictness a diplomatic
character. They are deemed as mere commercial agents; and
therefore partake of the ordinary character of such agents; and
are subject to the municipal laws of the countries where they
reside. Yet, as they are the public agents of the nation to
which they belong, and are often entrusted with the performance
of very delicate functions of State, and as they might be greatly
embarrassed by being subject to the ordinary jurisdiction of
inferior tribunals, state and national, it was thought highly ex-
pedient to extend the original jurisdiction of the Supreme Court
to them also. The propriety of vesting jurisdiction, in such
cases, in some of the national Courts seems hardly to have been
questioned by the most zealous opponents of the Constitution.
And in cases against ambassadors, and other foreign ministers,
and consuls, the jurisdiction has been deemed exclusive.

" § 1661. It has been made a question whether this clause, extend-
ing jurisdiction to all cases affecting ambassadors, ministers, and
consuls, includes cases of indictments found against persons for
offering violence to them, contrary to the statute of the United
States punishing such offence. And it has been held that it
does not. Such indictments are mere public prosecutions, to
which the United States and the offender only are parties; and
which are conducted by the United States for the purpose of
vindicating their own laws and the Law of Nations. They are
strictly, therefore, cases affecting the United States; and the
minister himself, who has been injured by the offence, has no
concern in the event of the prosecution, or the costs attending
it. Indeed, it seems difficult to conceive how there can be a
case affecting an ambassador, in the sense of the Constitution,
unless he is a party to the suit on record, or is directly affected
and bound by the judgment.

§ 1662. The language of the Constitution is, perhaps, broad
enough to cover cases where he is not a party, but may yet be
affected in interest. This peculiarity in the language has been
taken notice of in a recent case, by the Supreme Court. 'If a
suit be brought against a foreign minister' (said Mr. Chief
Justice Marshall, in delivering the opinion of the Court), 'the
Supreme Court alone has original jurisdiction; and this is shown
on the record. But, suppose a suit to be brought which affects
the interest of a foreign minister, or by which the person of his
secretary, or of his servant, is arrested. The minister does not,
by the mere arrest of his secretary, or his servant, become a
party to this suit; but the actual defendant pleads to the juris-
diction of the Court, and asserts his privilege. If the suit affects
a foreign minister, it must be dismissed; not because he is a
party to it, but because it affects him. The language of the
Constitution in the two cases is different: This Court can take
cognizance of all cases 'affecting' foreign ministers; and, there-
fore, jurisdiction does not depend on the party named in the
record. But this language changes when the enumeration pro-
ceeds to States. Why this change? The answer is obvious. In
the case of foreign ministers, it was intended, for reasons which
all comprehend, to give the national Courts jurisdiction over all
cases by which they were in any manner affected. In the case
of States, whose immediate or remote interests were mixed up
with a multitude of cases, and who might be affected in an almost
infinite variety of ways, it was intended to give jurisdiction in
those cases only to which they were actual parties.'
No. 6.

DECISIONS IN THE FRENCH COURTS.

Consul, when Diplomatic Agent.
Tribunal Civil de la Seine (1ère Chambre).
(Présidence de M. Barbou.)
Audience du 1 December.

DROIT INTERNATIONAL.—CONSUL ÉTRANGER.—INVIOLEABILITÉ DES AGENTS DIPLOMATIQUES (g).

Les relations internationales ne peuvent être entravées dans un intérêt privé.

Le décret du 13 ventose an II, qui consacre l'inviolabilité des agents diplomatiques, s'applique à tous les agents diplomatiques sans distinction, alors même qu'il s'agit d'un agent diplomatique non accrédité en France, et qui traverse le territoire pour se rendre à son poste.

"Un décret du 13 ventose an II garantit en principe l'inviolabilité des agents diplomatiques sans distinction. Cependant M. Begley, consul des Etats-Unis près le gouvernement Sarde, à la résidence de Gênes, a été arrêté dernièrement à Paris au moment où, traversant cette ville, il se rendait à son poste, et il a été incarcéré dans la maison pour dettes en vertu d'une ordonnance rendue sur la requête de M. Piedana, créancier de M. Begley.

"Aux termes d'un jugement emportant contrainte par corps, et rendu par un tribunal des Etats-Unis, M. Begley demandait aujourd'hui sa mise en liberté en se prévalant de sa qualité d'agent diplomatique.

"M. Dubrena, avocat de M. Begley, a prétendu, en invoquant la loi du 13 ventose an II, que la qualité d'agent diplomatique qui appartient à M. Begley aurait dû le mettre à l'abri d'une arrestation, car cette qualité, inséparable de la personne, la suit dans tous les lieux où elle réside, et même dans le pays où l'agent n'est pas accrédité et où il n'exerce pas ses fonctions. L'avocat établissait la qualité d'agent diplomatique de M. Begley en lisant une lettre de M. le ministre des affaires étrangères adressée à M. le procureur du Roi, et dans laquelle, protestant contre l'arrestation et l'incarcération de M. Begley, il reconnaît à M. Begley la qualité de consul des États-Unis à Gênes.

"M. Baroche, au nom de M. Piedana, créancier incarcérateur, a soutenu que le décret du 13 nivose an II ne pouvait s'appliquer

(g) Gazette des Tribunaux, December 2, 1840. Numéro 4755.
qu’aux agents diplomatiques accrédités en France, et non aux agents sans caractère officiel qui peuvent traverser le territoire. Il a soutenu, en second lieu, qu’un consul, comme M. Begley, prétend l’être, ne saurait être considéré comme un agent diplomatique inviolable aux termes du décret de nivose an II. Il ajoutait que le passeport délivré à M. Begley ne lui accordait d’autre titre que celui de citoyen des États-Unis.

Le Tribunal, sur les conclusions conformes de M. l’avocat du Roi, Gouin, a prononcé en ces termes :—

‘Attendu que les relations internationales ne sauraient être entravées dans un intérêt privé ;

‘Attendu que sous la dénomination générale d’agents diplomatiques se trouvent compris tous les agents ayant caractère officiel émané d’un souverain étranger pour servir d’intermédiaire dans les relations de nation à nation ;

‘Attendu que Begley, en reproduisant une lettre du ministère des affaires étrangères de France, qui lui reconnaît la qualité de consul des États-Unis à Gênes et de porteur de dépêches diplomatiques, justifie suffisamment de sa qualité d’agent diplomatique ;

‘En ce qui touche la demande afin d’exécution provisoire du présent jugement ;

‘Attendu que l’exécution provisoire doit être fondée par un titre ;

‘Attendu que Begley, en justifiant de sa qualité d’agent diplomatique qui seule doit faire ordonner sa mise en liberté, justifie du seul titre qui puisse être exigé en pareille matière ;

‘Ordonne la mise en liberté de Begley, et l’exécution provisoire du jugement sur minute et avant l’enregistrement.’

_Wife of Ambassador._

_Cour Royale de Paris (IIIe Chambre)._ (Présidence de M. Simonneau.)

_Audience du 21 Août._

_AMBASSADRICE.—IMMUNITÉS DE L’AMBASSADEUR.—ACTION PERSONNELLE._

—_INCOMPÉTENCE DES TRIBUNAUX FRANCAIS (h)._  

1° La femme d’un ambassadeur jouit-elle des immunités attachées à la personne de l’ambassadeur et à l’hôtel de l’ambassade ? (Oui.)  

2° Les personnes qui jouissent de ces immunités peuvent-elles y renoncer, et peut-on exciper contre elles d’actes qui impliqueraient cette renonciation ? (Non.)

“Que la femme d’un ambassadeur jouisse des immunités at-

(h) _Gazette des Tribunaux_, August 22, 1841. Numéro 4982.
Les conséquences que la Baronne de Pappenheim privait à l'hôtel de l'ambassade, à plus forte raison doivent-elles protéger la femme et les enfants de celui-ci. Mais ce qui faisait difficulté dans l'espèce, c'était d'une part, que la Baronne de Pappenheim n'habitait pas l'hôtel de l'ambassade, circonstance que le Tribunal de commerce avait considérée comme établie et qu'il avait visée dans son judgment ; et, d'autre part, que la Baronne de Pappenheim avait formé opposition au jugement qui l'avait condamnée au paiement des traités et avait elle-même cité son adversaire devant le Tribunal, d'où l'on tirait contre elle la conséquence qu'elle en avait reconnu la compétence.

Mais sur le premier point, le fait de l'habitation séparée de la Baronne de Pappenheim fit-il justifié, ne le privait pas du droit de tirer les conséquences résultant de son domicile de droit à l'hôtel de l'ambassade, la femme ne pouvant avoir d'autre domicile que celui de son mari.

Sur le second point, la citation par elle donnée devant le Tribunal de Commerce pour voir statuer sur l'opposition par elle formée au jugement au fond, était d'autant moins une reconnaissance de la compétence du Tribunal, qu'en même temps appel était interjeté par elle du jugement sur la compétence.

La Cour a prononcé en ces termes :—

‘"La Cour,

‘"Considérant que le Baron de Pappenheim est ministre du Grand-Duc de Hesse-Darmstadt, résidant en France ; qu'à ce titre il jouit des immunités accordées par le droit international aux ministres des Puissances étrangères ; que la Baronne de Pappenheim, sa femme, jouit des mêmes immunités ; que ces immunités sont d'ordre public ; que ceux qui en jouissent comme représentant leur gouvernement ne peuvent y renoncer, et qu'on ne peut exciper contre eux d'aucun acte par lequel ils auraient consenti à s'en dépouiller ;

‘"Qu'aussi le Tribunal de Commerce était incompétent pour connaître d'une action personnelle dirigée contre la Baronne de Pappenheim ; que cette incompétence étant d'ordre public, elle peut-être proposée en tout état de cause, et ne saurait être couverte par le consentement que l'appelante aurait donné à plaider devant le Tribunal ;

‘"Annule le jugement comme incompétivement rendu.’

(Plaidoiries : M° Devesvres, pour la Baronne de Pappenheim, appelante, et Maud'heux pour Tircin, int.—Conclusions con- formes de M. Berville, premier avocat-général.)"
APPENDIX VIII. PART VII. CHAP. IV. PAGE 301.

CONSULS.—DECISIONS IN THE FRENCH COURTS.

Tribunal Civil de la Seine (IVème Chambre).
(Présidence de M. Perrot de Chézelles.)
Audience du 4 Août.

CONSUL ÉTRANGER—ARRESTATION PROVISOIRE.—SAISIE CONSERVATOIRE (a).

"M. LE COMTE D’ABAUNZA, Marquis de Fuente Hermosa, Consul de l’Uruguay, habite, depuis plusieurs années, la France en cette qualité, et s’y est marié.
"Il est poursuivi par M. Abrassart, marchand de meubles, pour une créance s’élevant à plus de 5,000 fr.
"M. Abrassart, se fondant sur les dispositions de la loi de 1832, relative à la contrainte par corps à l’égard des étrangers, a obtenu de M. le Président du Tribunal une ordonnance, en vertu de laquelle il a fait arrêter et incarcérer son débiteur.
"M. d’Abaunza a formé une demande en main-leuee de l’écrou, et la 4ème Chambre avait à statuer sur le mérite de cette demande.
"M. Jules Favre s’est présenté pour la soutenir dans l’intérêt de M. d’Abaunza.
"Il a développé à cet effet plusieurs moyens:
"1° M. d’Abaunza, comme consul, est inviolable, et ne peut-être soumis à la contrainte par corps.
"2° Il est étranger sans doute, mais, depuis plusieurs années il a établi son domicile en France, et c’est seulement à l’étranger non domicilié que s’applique la loi de 1832.
"3° On ne peut l’assimiler à un débiteur forain, et, dès-lors, une saisie conservatoire ne pouvait être pratiquée à son préjudice.
"M. Bochet, avocat de M. Abrassart, a combattu ces divers moyens.
"Il a soutenu, en premier lieu, qu’il fallait, quant à l’inviolabilité de la personne, distinguer entre les ambassadeurs et les consuls: les premiers seuls sont inviolables quand ils ont été reçus et accrédités, les seconds ne le sont pas.
"En second lieu, pour être affranchi de la contrainte par corps,

(a) Gazette des Tribunaux, August 6, 1842. Numéro 4783.
"l'étranger doit avoir obtenu du gouvernement l'autorisation
d'établir son domicile en France.

"En troisième lieu, le débiteur étranger, qui peut d'une moment
à l'autre quitter le sol qu'il habite pour transporter sa résidence
ailleurs, est un véritable débiteur forain, et comme tel soumis aux
dispositions de l'article 822 du Code de Procédure Civile.

"M. le substitut Meynard de Frank, a reproduit et discuté avec
méthode et clarté les divers argumens des parties.

"S'appuyant de l'autorité de Merlin et de celle de la jurispru-
dence, il a fait ressortir la différence de position qui existe entre
les ambassadeurs, ministres, envoyés, résidens, chargés-d'affaires,
et les consuls.

"Les consuls des nations étrangères," a dit ce magistrat, "sont
en France ce qu'ils sont dans tous les États de l'Europe, des pro-
tecteurs, quelquefois juges de marchands de leur nation, d'ordi-
naire même des marchands que l'on envoie non pour représenter
leur prince auprès d'une autre Puissance souveraine, mais pour
protéger leurs compatriotes en ce qui regarde le négoce, souvent
aussi pour connaître et décider des différends qui peuvent s'élever
entre eux au sujet de ces sortes d'affaires.

"Il n'y a pas de consuls, même parmi ceux à qui des traités
exprès attribuent la qualité de juges, qui aient, à l'instar des
ambassadeurs, le caractère représentatif, d'où découle essentielle-
ment l'indépendance de l'autorité locale.

"Aussi, qu'il soit de règle constante qu'un ambassadeur ne
peut-êtr traduit devant les Tribunaux du pays où il réside
comme tel pour raison des dettes qu'il a contractées envers les
habitans de ce pays, il est certain qu'il en est autrement des consuls,
qui tous les jours sont cités dans nos Tribunaux à la requête des
Français envers lesquels ils se sont obligés." (Aix, 14 Août
1829.—Paris, 26 Mars 1840.—28 Avril 1841.)

"M. l'avocat du Roi s'explique ensuite sur la seconde question
relative à la manière dont l'étranger doit avoir domicile établi
en France pour échapper à la contrainte par corps.

"Analyant et combinant d'une part les dispositions des lois de
1807 et de 1832 sur la contrainte par corps, de l'autre les diverses
décisions des Cours sur l'application de ces lois, le ministère
public en conclut que l'autorisation du gouvernement n'est pas
rigoureusement nécessaire, et qu'il appartient aux Tribunaux
d'apprecier les circonstances d'après lesquelles l'étranger doit être
considéré comme ayant, ou non, son domicile en France. (Cassa-
tion, 20 Août 1811.—6 Février 1826.—15 Mars 1831.)

"M. l'avocat du Roi estime que, dans l'espèce, M. d'Abaunza,
qui réside en France depuis 1833, qui s'y est marié, qui y est
attaché comme consul de l'Uruguay, justifie suffisamment qu'il y a
son domicile, et que sous ce rapport, il doit être affranchi de con-
trainte par corps.
Il ne saurait, par la même raison, être considéré comme un débiteur forain, et dès lors la saisie conservatoire pratiquée sur lui est nulle.

Après en avoir délibéré, le Tribunal :

Attendu que si les agents diplomatiques jouissent de certaines immunités, c'est parce qu'ils représentent leur gouvernement vis-à-vis d'un autre gouvernement, mais que les simples consuls ne peuvent, sous ce rapport, prétendre à aucune assimilation, puis-qu'ils ne sont que des fonctionnaires délégués pour protéger et régler les intérêts privés de leurs nationaux ;

Qu'ainsi la qualité d'agent consulaire, que réclame Carlier d'Abaunza, ne saurait l'affranchir de l'exercice des poursuites dirigées contre lui par Abrassart ;

Attendu que la résidence prolongée d'un étranger et même son mariage en France ne sauraient lui faire obtenir les droits résultant de l'établissement du domicile, qui ne peut avoir lieu que dans les termes prévus par l'article 13 du Code Civil, c'est-à-dire, avec l'autorisation royale ;

Que, suivant les termes de l'article 16 de la loi du 17 Avril 1832, un établissement du commerce ou la propriété d'immeubles sur le territoire Français, qui supposent dans ces deux cas une longue résidence, n'ont pour effet que de mettre l'étranger à l'abri d'une arrestation provisoire, mais ne l'affranchissent pas de la contrainte par corps exercée dans les termes de l'article 14 de la même loi, et qui est la conséquence de la qualité d'étranger.

Déboute Carlier d'Abaunza de sa demande afin de mise en liberté et de nullité d'écrou, etc.'

Cour Royale de Paris (III<sup>e</sup>me Chambre).

(Présidence de M. Simonneau.)

Audience de 28 Avril.

LIQUIDATEUR CHARGÉ DE GÉRER.—ACTES DE GESTION.—ACTION PERSONNELLE.—QUALITÉ DE CONSUL.—CONTRAINTE PAR CORPS (b).

1° Le liquidateur d'une société, chargé en outre de gérer et administrer l'établissement social sous sa responsabilité personnelle, est-il personnellement tenu et par corps des engagements par lui souscrits ? (Oui.)

2° La qualité de consul d'une Puissance étrangère dont ce liquidateur serait revêtu, le soustrairait-elle à la contrainte par corps ? (Non).

Ainsi jugé par l'arrêt suivant :

La Cour, en ce qui touche l'appel principal.

(b) Gazette des Tribunaux, May 9, 1841. Numéro 4390.
"Considérant qu'Hermann Delong n'a pas été seulement nommé liquidateur, mais qu'il a été chargé de gérer et administrer l'établissement sous sa responsabilité personnelle; qu'il a accepté cette double mission et a fait des actes de gestion.

"En ce qui touche l'appel incident de Boullé et Filon.

"Considérant que, quand Delong justifierait de sa qualité de consul, cette qualité ne lui donnerait pas le caractère d'agent diplomatique, et qu'il ne jouirait pas des immunités accordées à ce titre; que par conséquent, Delong peut-être soumis à la contrainte par corps.

"Confirme sur l'appel principal, infirme sur l'appel incident.'

(Plaidans: M° Poulain pour Hermann Delong appelant, et M° Durand-St-Amand pour Boullé et Filon, int.)

Appeal in Case of D'Abuanza.

Cour Royale de Paris (II° Chambre).
(Présidence de M. Algier.)
Audience du 25 Aout.

CONSUL. — CONTRAINE PAR CORPS.—DOMICILE DE L'ÉTRANGER.—DÉBITEUR FORAIN (c).

1° Les consulrs étrangers, sans mission diplomatique, ne participent point aux immunités dont jouissent les ambassadeurs et envoyés des Puissances étrangères; en tous cas, ils ne peuvent exciper de leur qualité devant les Tribunaux qu'autant qu'ils ont reçu l'exequatur du gouvernement Français.

2° Une résidence prolongée en France, un établissement par mariage, ne suffisent pas pour constituer en faveur de l'étranger un domicile légal de nature à l'affranchir de la contrainte par corps; le domicile exigé par l'article 14 de la loi du 17 Avril 1832, ne peut-être acquis qu'aux conditions imposées par l'article 13 du Code Civil.

3° L'étranger non domicilié en France, et qui n'y possède ni immeuble, ni établissement, peut-être considéré comme débiteur forain dans le lieu même où il a établi sa résidence, et est dès-lors passible de saisie conservatoire.

"M. Carlier d'Abuanza, Marquis de la Fuente Hermosa, Espagnol de naissance, habite Paris depuis 1833. Il n'a obtenu à aucune époque l'autorisation du roi d'établir son domicile en France; mais il s'est marié à Paris, et a continué d'y résider sans interruption. Sans profession jusqu'alors, M. Carlier d'Abuanza a été pourvu en 1840 du titre de consul-général de la république

(c) Gazette des Tribunaux, September 5 and 6, 1842. Numéro 4809.
APPENDIX VIII.

"orientale de l'Uruguay, et quoiqu'il n'ait point encore obtenu d'exequatur du gouvernement Français, il serait en ce moment, d'après sa prétention, chargé des fonctions de ministre pléni- tentaire de l'Uruguay, en l'absence du titulaire. C'est dans ces circonstances que M. Carlier d'Abaunza a été inacéré provisoirement en qualité d'étranger, et que le mobilier garnissant son appartement a été frappé d'une saisie conservatoire, à la requête de Abrassart, son tapissier, créancier d'une somme assez imporante pour travaux et fournitures de son état.

"Sur la demande en condamnation et en validité de la saisie formée par le créancier, M. d'Abaunza a formé reconventionnelle- ment une demande en nullité de l'écrou et de la saisie conservatoire, se fondant 1° sur sa qualité de consul-général de l'Uruguay, et sur l'inviolabilité qu'elle doit assurer à sa personne; 2° sur sa résidence prolongée en France et le domicile de fait et d'intention qu'il soutient y avoir acquis; 3° enfin, sur l'exagération du prix des fournitures et la dissimulation des a-comptes payés.

"Sur ces contestations, dont nous avons déjà rendu compte dans la Gazette des Tribunaux, lorsqu'elles se sont présentées en première instance, est intervenu le jugement suivant:

"Attendu que si les agents diplomatiques jouissent de certaines immunités, c'est parce qu'ils représentent leur gouvernement vis-à-vis d'un autre gouvernement, mais que les simples consuls ne peuvent, sous aucun rapport, prétendre à aucune assimilation, puisqu'ils ne sont que des fonctionnaires délégués pour protéger et régler les intérêts privés de leurs nationaux;

"Qu'aussi la qualité d'agent consulaire que réclame Carlier d'Abaunza ne saurait l'affranchir de l'exercice des poursuites dirigées contre lui par Abrassart;

"Attendu que la résidence prolongée d'un étranger, même son mariage en France, ne sauraient lui faire obtenir des droits résultant de l'établissement du domicile, qui ne peut avoir lieu que dans les termes prévus par l'art. 13 du Code Civil, c'est-à-dire, avec l'autorisation royale;

"Que suivant les termes de l'art. 16 de la loi du 17 Avril 1832, un établissement de commerce ou la propriété d'immeubles sur le territoire Français, qui supposent dans ces deux cas une longue résidence, n'ont pour effet que de mettre l'étranger à l'abri d'une arrestation provisoire, mais ne l'affranchissent pas de la contrainte par corps exercée dans les termes de l'art. 14 de la même loi, et qui est la conséquence de la qualité d'étranger.

"En ce qui touche la saisie conservatoire formée sur le mobilier d'Abaunza;

"Attendu que sa qualité d'étranger étant établie, le sieur Abras-
mobilier de son débiteur, qui doit être considéré comme débiteur
"forain ;
" 'Le Tribunal déboute Carlier d'Abaunza de sa demande en
"nullité d'écron ; le condamne par corps à payer à Abrassart la
"somme de 2,700 francs, à laquelle le Tribunal réduit le montant
"des fournitures faites ; déclare la saisie conservatoire bonne et
"valable, etc.'
"Appel.
" M° Jules Favre, pour M. Carlier d'Abaunza, a soutenu que
"soit comme consul, soit comme étranger domicilié, le sieur Carlier
"d'Abaunza était affranchi de la contrainte par corps prononcée
"par la loi du 17 Avril 1832.
" 'La personne des agents diplomatiques,' a dit le défenseur, 'est
"inviolable. C'est un privilège qui résulte de leur caractère
"même, et de l'autorité qui leur est conférée par leurs lettres de
"créance. Les publicistes donnent pour raison de cette inviolabi-
"lité qu'on pourrait leur imputer des crimes s'ils pouvaient être
"punis pour des crimes : qu'on pourrait leur supposer des dettes
"s'ils pouvaient être arrêtés pour dettes. Il faut donc suivre vis-
"à-vis des ambassadeurs les règles tirées du droit des gens, et non
"celles qui dérivent du droit politique.' (V. Wicquefort; M.
"Pardessus, 1448; et un décret de la Convention du 13 ventose
"an II.)
"Ce principe posé, le défenseur s'efforce de prouver que le titre
"de consul-général, dont est revêtu son client, suffit pour assurer
"l'inviolabilité de sa personne, indépendamment de l'executur
"qu'il avoue n'avoir point encore été obtenu par M. Carlier d'A-
"baunza.
"En second lieu, M° Jules Favre s'appuie sur l'autorité de Mer-
"lin pour soutenir que les Tribunaux ont plein pouvoir pour déci-
"der, d'après les circonstances, si la résidence prolongée d'un
"étranger en France n'équivaut pas au domicile exigé par les lois
"de 1807 et de 1832 pour affranchir l'étranger de la contrainte par
"corps. Il cite par induction deux arrêts de la Cour de Cassation
"des 20 Août 1811, et 6 Février 1826, un arrêt de la Cour de Paris
"du 15 Mars 1831.
"'Enfin,' dit le défenseur, 'si l'habitation continue de l'étranger
"suffit pour lui conférer un domicile suffisant au point de vue de la
"contrainte par corps, on ne peut, sans torturer le sens de la loi,
"considérer l'étranger dans le lieu même de sa résidence comme
"un débiteur forain.'
"M° Bochet, pour M. Abrassart, a reproduit les arguments de la
"sentence.
" 'M. Carlier d'Abaunza,' a dit le défenseur, 'se prévant d'immu-
"nités auxquelles il n'a aucun droit. S'il a le titre de consul de
"l'Uraguay, il n'en a jamais exercé légalement les fonctions, en
"supposant qu'il les ait jamais exercées, par la raison que le gou-
"vernemment Français lui a refusé l’exequatur. En effet, M. le
ministre des affaires étrangères a certifié ce fait dans une lettre
adressée, à l’occasion du procès, à M. le procureur du Roi, et
a ajouté que M. d’Abaunza n’avait aucun droit aux privilèges
dont jouissent les agents diplomatiques. Soutenir que le refus
d’exequatur est chose indifférente, et que les seules lettres de
créance, dont M. Carlier peut-être porteur, suffisent pour lui as-
surer les immunités des envoyés des Puissances étrangères, c’est
dire qu’un gouvernement étranger aurait le droit d’installer chez
nous, et malgré nous, un de ses nationaux, et de l’affranchir des
lois qui régissent tous les étrangers en France.

"D’ailleurs," ajoute le défenseur, ‘un consul n’est pas un agent
diplomatique. (V. Vattel, Droit des Gens, liv. 4, ch. 5 : ordon-
nance de 1681 ; Cassation, 13 vendémiaire an IX ; Aix, 14 Août
1829 ; Paris, 28 Avril 1841.)’

"Sur le second moyen, le défenseur invoque l’autorité de tous
les auteurs, Merlin excepté, et deux arrêts de la Cour de Paris,
des 16 Août 1811, et 2 Mai 1834, pour établir qu’en matière de
contrainte par corps le seul domicile dont puisse exciper l’étran-
ger en France, est celui qu’il acquiert conformément à l’article
13, du Code Civil, c’est-à-dire, avec l’autorisation du roi. Il
soutient, par les mêmes motifs, que l’étranger qui n’a pas de do-
icile légal en France, et qui n’y possède ni immeubles ni éta-
blissement de commerce, doit être assimilé au débiteur forain.

"La Cour, sur les conclusions conformes de M. l’avocat-général
Boucly, a statué en ces termes:—

"Considérant que si Carlier d’Abaunza a reçu de la république
de l’Uruguay une commission de consul-général à Paris, il est
certain qu’il n’a pas obtenu l’exequatur du gouvernement du roi ;
que dès-lors il n’est pas fondé à prétendre aux prérogatives et
immunités qui peuvent appartenir aux consuls ;

"Considérant que l’appelant ne justifie pas qu’il soit domicilié
en France ;

"En ce qui touche la saisie foraine :

"Adoptant les motifs des premiers juges,

"Confirme.’’

APPENDIX IX. PART VIII. CHAP. III. PAGE 338.

INTERNATIONAL RELATIONS OF FOREIGN SPIRITUAL POWERS WITH THE STATE.—THE POPE.

No. 1.

Since the accession to the Papacy of Pius IX. changes, the im-
portance of which is as yet but partially and dimly seen, have taken
place with respect both to the Temporal and Spiritual relations of
the Pontiff of the Latin Church, which, directly or indirectly, affect
his International status.
The International jurist who considers the change effected in his Temporal position must bear constantly in mind these historical facts:—1. That, since the beginning of this century, at least, to go no further back, the position of the Pope as a temporal prince has been maintained, when maintained at all, by the intervention of foreign troops, owing allegiance to a foreign State. 2. That the incorporation of the Papal dominions, like those of the other Italian princes, into the Kingdom of Italy, has been as much effected by the will of the subjects of that dominion, as the placing of the Hanoverian princes on the throne of England, the establishment of the Republic in the United States of America, or the recent accession of a prince of the House of Savoy to the throne of Spain—all facts recognized by the States of the civilized world—have been effected by the deliberate will of the subjects of the countries in which these changes were made. 3. That, since 1848, the Pope has admitted that, without the aid and protection of a foreign army, he cannot govern Rome as a temporal prince.

With respect to the Spiritual position of the Pope, the new pretensions, or the revival of obsolete and practically-abandoned pretensions, have been such as to affect or concern the civil governments of foreign States.

Certain new dogmas have been recently promulgated in public instruments by the Pope; the Immaculate Conception; those contained in the Encyclic Quanta cura, and its Syllabus, which condemned, and, by necessary implication, if not directly, inculcated disobedience to, the law of foreign States; the personal Infallibility of the Pope, set forth in the Constitutio dogmatica (cap. iv.) beginning Pastor aeternus.

These promulgations have awakened the vigilance of foreign Governments, and already induced that of the (North) German Empire to make a very material alteration in the civil administration of the affairs of the Roman Catholic clergy (a); an alteration partly grounded on the fact that the new dogmas have created a

(a) The Prussian Minister of Worship and Education (Cultus ministerium) has, during the present reign, discharged the duties of his office with the aid or incumbence of separate denominational boards—Roman Catholic and Protestant. These boards are now abolished.

"In dem bekannten Erlass des Cultusministeriums u. s. w., die Aufstellung einer Unterscheidung zwischen der römischer Kirche vor und der Kirche nach dem Juli v. J. (i.e. 1870). Vor dem 18 Juli—so sagt man—sei die römische Kirche eine festbestimmte gewesen, nach dem 18 Juli habe sich nicht nur eine wesentliche änderung erfahren sondern sie sei auch gewissermassen ins Unsgewisse gefallen, weil nunmehr des Papst sobald er ex-cathedra rede abstract gesprochen, täglich neue Glaubenssätze aufstellen können welche von allen Angehörigen der Kirche als solche anzunehmen seien. . . . Selbst im gegenwärtigen Falle hat die preussische Staatsregierung der Verkündung der neuen Dogmen
division, already large, and said to be increasing, among Roman Catholics: those who refuse to recognise and adopt the novelties calling themselves Old Catholics, inasmuch as they claim to stand upon the old paths of their Church, and designating those who accept the novelties as new Catholics.

Austria, since the decree of Infallibility, has abandoned her concordat with Rome. Bavaria, perhaps regretting that she did not follow Prince Hohenlohe's advice, is now hesitating as to the course which she must take; while the choice of the most learned, pious, and excommunicated Döllinger as Rector of the University of Munich is a circumstance of no mean significance.

In these Commentaries a full investigation of this grave subject would be, I think, improper; but, at all events, would require more space than can be allotted to it.

Certain instruments having an important though indirect bearing upon the International relations of the Papacy are here printed; and I have thought that the following chronicle or catalogue may be useful to those who wish to penetrate further than I am able to do in this work into the International Ecclesiastical history of this eventful period.

**Dates of Important Events affecting the Relations of the Pope with Foreign States, 1845–1871.**

1845. Rossi (French ambassador at Rome) to Guizot. (Guizot, Mem. vii. 400).


1848. Pope promises new constitution to his subjects. Rossi assassinated. Pope flies from Rome to Gaeta. (Ib. 1848.)

1849, Jan. 5. Viscount Palmerston to Marquis of Normanby. (Parl. Papers, 1849.)

Jan. 28. Same to same.

Feb. 2. Prince Castelcicala to Viscount Palmerston.

Feb. 10. Viscount Palmerston to Prince Castelcicala.

March 6. Apostolic Nuncio at Paris to Marquis of Normanby.

March 27. Viscount Palmerston to Marquis of Normanby. French troops enter Rome; restore Papal Government.

1856. Note or Protest of Cavour to the Congress of Paris on the state of Italy (Ann. Reg. 1856).

"keinerlei Hinderniss in den Weg gelegt: erst dann, als thatsächlich das "hervor trat, was vorher befürchtet wor, dass das neue Dogma der Unfehl- "barkeit einen Conflict mit der Staatsgewalt hervorrief—dass sicherstes "Zeichen dafür, dass das Dogma nicht allein die Kirche sondern auch den "Staat berührt—erst dann die Regierung zur Sache Stellung genommen. "um das Recht des Staates gegen einen Uebergriff der Kirche zu ver- "theidigen."—Norddeutsche Allgemeine Zeitung, Nr. 170, 25 Juli. Berlin, 1871. See also Nr. 173, 28 Juli; Nr. 169, 24 Juli.

Assembly of Romagna "refuse to live any longer under "temporal sway of the Pontiff." (Ib. 1859.)

1860. Central and South Italian States incorporated in Kingdom of Italy. (Ib. 1860.)

1861, March 14. Cavour proposes and carries by the unanimous vote of the Chamber of Deputies, "that the King Victor "Emanuel take for himself and his successors the title of "King of Italy." (Ib. 1861.)

1864, September 15. Convention between France and Italy as to "the present territory of the Holy Father and the with- "drawal of the French troops." (Ib. 1864.)

This was followed by:—

1864, December 8. The Encyclic Quanta Cura, with its Syllabus.

1865. Dépêche de M. Drouyn de Lhuys à l'Ambassadeur de France à Madrid. (Livre jaune, 1866-4).


1866, November. Circular of Ricasoli to Italian Prefects as to Rome.

1867. French troops again enter Rome.

1869, April 9. Circular letter of Prince Hohenlohe as to the course which Independent States ought to adopt with reference to the Vatican Council.


1870, May 1. The Constitutio Dogmatica, cap. iv. Pastor aeternus, containing the decree "De Romani Pontificis Infallibilitate" proposed.

July 13. Infallibility of the Pope voted by majority of Council. Austria renounces her concordat with Rome.

August 29. Circular of Italian Minister (Visconti Venosta) to Italian ministers in foreign States. (Parl. Papers, 1870-1).

September 8. Letter of King of Italy to the Pope.

September 11. Answer of the Pope.

September 22. M. Sénard, minister of the French Republic at Florence, writes that "the Convention of 15 September "has virtually ceased to exist."

October 9. Plebiscite of Rome and the provinces desiring union with and incorporation into the Kingdom of Italy accepted and decreed by Italian Government.

October 17. Circular of Cardinal Antonelli to Papal Nuncios abroad.

October 18. Letter from Italian Minister for Foreign Affairs to Italian ministers in Foreign States.
1870, November 8. Letter of Italian Minister at Brussels to
Italian Minister for Foreign Affairs.
November 14. Letters from Italian Minister at Madrid to
Minister of State at Madrid.
1871, May 13. The Italian “Statute of Guarantees” as to the
future relations of the Pope with the Italian Government.
May 15. Papal Allocution thereupon.
July 3. L’insediamento della sede del Governo in Roma
Capitale del Regno. (Gazzetta Officiale, Roma, 7 Luglio.)
First Council of Italian ministers under the King of Italy,
in the Quirinal Palace at Rome.
July 22. Debate in the Assemblee Nationale of France as to
taking measures, in concert with other States, to restore
Rome to the Pope.

No. 2.

Letter to Guizot from Rossi at Rome.*

April 27, 1845.

"Les choses sont toujours dans un état déplorable, et il n’y a, en
ce moment, point d’amélioration à espérer. Bien loin de songer
à séculariser l’administration civile, le Pape ne veut employer,
même parmi les prélats, que ceux qui se sont faits prêtres. À
cela s’ajoute l’absence de tout apprentissage et de toute carrière
régulière. Un prêtre est apte à tout. Le président des armes
était un auditeur de rote. C’est comme si nous prenions un con-
seiller de cassation pour lui confier l’administration de la guerre.
Quant aux finances, c’est une plaine dont personne ne se dissimule
la gravité. On marche aujourd’hui à l’aide d’un expédient. Le
gouvernement a acheté l’apanage que le prince Eugène de Beau-
harnaïs avait dans les Marches. Il l’a immédiatement revendu à
une compagnie composée de princes romains et d’hommes d’affaires.
Les acheteurs verseront le prix dans le trésor pontifical en plu-
sieurs payements, longtemps avant l’époque où le gouvernement
pontifical devra payer la Bavière. C’est là l’expédient. En défi-
nitive, c’est un emprunt fort cher.
"Cette situation se complique des jésuites. Ils sont mêlés ici à tout,
ils ont des aboutissants dans tous les camps ; ils sont pour tous un
sujet de craintes ou d’espérances. Les observateurs superficiels
peuvent facilement s’y tromper, parceque la Société de Jésus
présente trois classes d’hommes bien distinctes. Elle a des hommes
purement de lettres et de sciences, qui deviennent peut-être les ménées
de leur compagnie mais qui y sont étrangers et peuvent de bonne
foi affirmer qu’ils n’en savent rien. La seconde classe se compose

* See p. 415, note (g).
"d'hommes pieux et quelques peu crédules, sincèrement convaincus
"de la parfaite innocence et abnégation de leur ordre, et qui ne
"voient, dans les attaques contre les jésuites, que d'affreuses ca-
"lomnies. Les premiers attirèrent les gens d'esprit, les seconds les
"âmes pieuses. Sous ces deux couches se cache le jésuitisme pro-
"prement dit, plus que jamais actif, ardent, voulant ce que les jésuites
"ont toujours voulu, la contre-révolution et la théocratie, et con-
"vaincus que dans peu d'années ils seront les maîtres. Un de leurs
"partisans, et des plus habiles, me disait hier à moi-même : 'Vous
"verrez, Monsieur, que, dans quatre ou cinq ans, il sera établi,
"même en France, que l'instruction de la jeunesse ne peut appor-
"ter qu'au clergé.' Il me disait cela sans provocation aucune de
"ma part, uniquement par l'exubérance de leurs sentiments dans
"ce moment. Ils croient que des millions d'hommes seraient prêts
"à faire pour eux en Europe, ce qu'ont fait les Lucernois en Suisse.

"C'est là un rêve : il est vrai, au contraire, que l'opinion géné-
"rale s'élève tous les jours plus redoutable contre eux, même en
"Italie ; mais il est également certain que leurs moyens sont consi-
"dérables ; ils disposent de millions, et leur fonds augmentent sans
"cesse ; leurs affiliés sont nombreux dans les hautes classes ; en
"Italie, ils les ont trouvés particulièrement à Rome, à Modène et à
"Milan. À Milan on tient des sommes énormes à leur disposition,
"pour le moment, où ils pourront s'y établir et s'en servir. Je sais
"dans quelles mains elles se trouvent. Ici, ils sont maîtres absolus
"d'une partie de la haute noblesse qui leur a livré ses enfants.

"Ce qui est important pour nous, c'est qu'il est certain et en
"quelque sorte notoire que leurs efforts se dirigent en ce moment,
"d'une manière toute particulière, vers deux points, la France et le
"futur Conclave. Au fond, ces deux points se confondent, car c'est
"surtout en vue de la France qu'ils voudraient un Pape qui leur fût
"plus inféodé que le Pape actuel.

"Je suis convaincu que le Saint-Père ne se doute pas de toutes
"leurs ménées et de tous leurs projets. Je vais plus loin ; je crois
"qu'il en est de même de leur propre général, le père Roothaan ; je
"ne le connais pas ; mais d'après tout ce qu'on m'en dit, il est
"comme le Doge de Venise dans les derniers siècles ; le pouvoir et
"les grands secrets n'étaient pas à lui ; ils n'appartenaient qu'au
"conseil des Dix.

"Telle est la situation générale. Voici la nôtre. Votre Excel-
"lence me permettra de lui parler avec une entière franchise ; il est
"important de ne pas se faire d'illusion sur un état de choses qui
"peut devenir grave d'un instant à l'autre.

"Le Saint-Père et le gouvernement pontifical sont pénétrés d'une
"admiration sincère pour le Roi, pour sa haute pensée, pour le
"système politique qu'il a fait prévaloir. Sans bien comprendre
"tous les dangers qu'on avait à vaincre, toutes les difficultés qu'on
"a dû surmonter, ils sententconfusément qu'ils étaient au bord d'un
APPENDIX IX.

"abîmé, et qu'ils doivent leur salut à la politique du gouvernement du Roi.

"Leur reconnaissance est vraie, mais elle n'est ni satisfaite, ni éclairée. Parce qu'on a arrêté l'esprit de révolution et de désordre, ils sont convaincus qu'on peut faire davantage et revenir vers le passé. Tout ce qu'on a fait pour eux n'est pour eux qu'un "à-compte. Ignorant jusqu'aux choses les plus notoires chez nous, ne voyant la France et l'Europe qu'à travers trois ou quatre méchants journaux, ne recevant d'informations détaillées que d'un côté, car les hommes sensés et modérés n'osent pas tout dire, de "peur d'être suspectés et annihilés, les chefs du gouvernement pontifical partagent au fond, dans une certaine mesure, les espérances des fanatiques; seulement, il n'ont pas la même ardeur, la même impatience; ils comptent sur le temps, sur les évènements, sur leur "propre inaction; ils se flattent de gagner sans jouer. Ils ne feront "rien contre le Roi, sa dynastie, son gouvernement; mais ils aimeraient bien ne rien faire aussi qui pût déplaire aux ennemis du "Roi, de la France, de nos institutions. Tout ce qu'ils ont de "lumière, de raison, de prudence politique, est avec nous et pour "nous; leurs antécédents, leurs préjugés, leurs souvenirs, leurs "habitudes sont contre nous. Quand on pense que c'est à de vieux "religieux que nous avons à faire, on comprend combien il est "difficile de leur faire sentir les nécessités des temps modernes et "des gouvernements constitutionnels; nous ne leur parlons que de "choses obscures pour eux et désagréables; nos adversaires ne les "entretiennent que de pensées qu'ils ont toujours nourries; nous "contrarions tous leurs souvenirs et leurs penchants; nos adversaires "les réveillent et les caressent.

"Dans cet état de choses, ce n'est pas par quelques entretiens "officiels, de loin en loin, avec le cardinal-secrétaire d'État et le "préfet de la Propagande, qu'on peut traiter ici avec succès les "affaires du Roi. Il n'y a ici ni une cour, ni un gouvernement tels "qu'on en voit et conçoit ailleurs. Il y a un ensemble très-compliqué et sui generis. Le mode d'action ne peut pas être ici le "même que partout ailleurs.

"Sans doute à la rigueur, grâce à l'autorité morale du Roi et à "l'importance politique de la France, il ne serait pas impossible "d'enlever ici une question comme à la pointe de l'épée. Quand "on ne leur laisserait absolument d'autre choix que de céder ou de "se brouiller avec la France, ils céderaient. Mais ce moyen violent "ne pourrait être employé que dans un cas extrême, et les excep-
"tions ne sont pas des règles de conduite.

"Comme règle de conduite, il ne faut pas oublier que rien d'im-
"portant ne se fait et ne s'obtient ici que par des influences indi-
rectes et variées. Ici les opinions, les convictions, les détermina-
"tions ne descendent pas de haut vers le bas, mais remontent du "bas vers le haut. Celui qui, par une raison ou par une autre,
"plait aux subalternes ne tarde pas à plaire aux maîtres. Celui
qui n'a plus qu'aux maîtres se trouve bientôt isolé et impuissant.
Les influences subalternes et toutes-puissantes sont de trois
espèces : le clergé, le barreau et les hommes d'affaires, ce qui
comprend les hommes de finance et certains comptables, race par-
ticulaire à Rome, et qui exerce d'autant plus d'influence qu'elle
seule connaît et fait les affaires de tout le monde. Qu'une vérité
parviendra à s'établir dans les sacristies, dans les études et dans les
computesteries, rien n'y résistera et réciproquement.
Votre Excellence voit dès lors quel est le travail à entreprendre
ici si on veut réellement se mettre à même de faire les affaires du
Roi et de la France sans violence, sans secousse, sans bruit. Je
dois le dire avec franchise; ce travail n'a pas même été com-
mençé. J'ai trouvé l'ambassade toute entière n'ayant absolument
de rapport qu'avec les salons de la noblesse qui sont, comme j'ai
déjà eu l'honneur de vous l'écrire, complètement étrangers aux
affaires et sans influence aucune. Je les fréquente aussi, et je
vois clairement ce qui en est. Un salon politique n'existe pas
à Rome.
Cet état de choses me semble fâcheux et pourrait devenir un
danger. Les amis de la France se demandent avec inquiétude
qu'elle serait son influence ici si, par malheur, un conclave venait
to s'ouvrir. À la vérité, la santé du Saint-Père me paraît bonne;
il a bien voulu m'en entretenir avec détail, et la gaieté même de
l'entretien confirmait les paroles de Sa Sainteté. Il n'en est pas
moins vrai qu'il y a ici des personnes alarmées ou qui feignent de
l'être ; elles vont disant que l'enflure des jambes augmente, que le
courage moral soutient seul un physique délabré et qui peut
tomber à chaque instant. Encore une fois, ces alarmes me par-
issent fausses ou prématurées ; en parlant de ses jambes, le Pape
m'a dit lui-même que, très-bonnes encore pour marcher, elles
étaient un peu roides pour les génuflexions, et que cela le fatiguait
un peu. À son âge, rien de plus naturel, sans que cela annonce
une fin prochaine. Quoiqu'il en soit, l'ouverture prochaine d'un
conclave n'est pas chose impossible et qu'on puisse perdre de vue.
Dans l'état actuel, nous n'aurions pas même les moyens de savoir
ce qui s'y passerait; notre influence serait nulle."

(Guizot, Mémoire de mon Temps,
tome vii. pp. 400 to 406.)
APPENDIX IX.

No. 3.
CORRESPONDENCE OF THE ENGLISH SECRETARY OF STATE FOR FOREIGN AFFAIRS, RESPECTING THE AFFAIRS OF ROME, PRESENTED TO PARLIAMENT, 15TH JUNE, 1849.

No. I.
Viscount Palmerston to the Marquis of Normanby.
"Foreign Office, January 5, 1849.
"(Extract.)
"In regard to the present position of the Pope, I have to observe that no doubt it is obviously desirable that a person who in his spiritual capacity has great and extensive influence over the "internal affairs of most of the countries in Europe, should be in such a position of independence as not to be liable to be used by "any one European Power as a political instrument for the annoyance of any other Power; and in this view it is much to be wished that the Pope should be sovereign of a territory of his own."On the other hand, if it be admitted as a general principle, "that questions and differences between the people and the sovereign of each State should be left to be settled by those parties "without the interference of any foreign armed force, it is not easy to see, in the peculiar position of the Pope with regard to his subjects, what should make the Roman States an exception to this general rule."The main circumstance in which the relations between the Pope and his subjects differ from the relations which subsist between other Sovereigns and their subjects, is that the Pope does not reign either by hereditary right or by the choice of the people whom he governs, but that he is elected by the College of Cardinals, a body which is not in its constitution national, which is I believe self-elected, and of which about a half are not natives of the State for which they choose the sovereign."These circumstances would seem to render it the more incumbent on the Pope to give to his subjects the requisite securities for good government, and these circumstances would also appear to render it the less justifiable for any foreign Powers to use armed interference in order to assist the Pope in maintaining, if he were so disposed, a bad system of government.

No. II.
Viscount Palmerston to the Marquis of Normanby.
"Foreign Office, January 28, 1849.
"(Extract.)
"With regard to the proposal made by Austria to France for a combined military action by Austria, France, and Naples, for the
"purpose of re-establishing the Pope in the Roman States, your "Excellency will say that Her Majesty's Government concur with "the Government of France in viewing with much regret this an- "nouncement of the wishes and intentions of the Austrian Gov- "ernment. Her Majesty's Government do not pretend to pass judg- "ment in respect to those differences between the Pope and his "subjects which led to the retirement of the Pope to Gaeta; but "Her Majesty's Government would upon every account, and not "only upon abstract principle but with reference to the general "interests of Europe, and from the value which they attach to the "maintenance of peace, sincerely deprecate any attempt to settle "the differences between the Pope and his subjects by the military "interference of foreign Powers. "It appears to Her Majesty's Government, as at present in- "formed, that those differences are not of such a nature as to pre- "clude the hope that they might be accommodated by the diplomatic "interposition of friendly Powers, and it is needless to observe how "much better such a mode of settlement would be than an autho- "ritative imposition of terms by the force of foreign arms. "With respect to the attitude which Great Britain would in any "case assume in regard to these affairs, your Excellency will say "that the attitude of this country would be that of observation, "and that Great Britain could take no part in such matters beyond "expressing, if it should appear to be necessary, the opinion which "Her Majesty's Government might entertain thereupon. "These affairs, however important in their bearing upon the "general interests of Europe, do not immediately affect any direct "interests of Great Britain; and whatever turn therefore these "affairs may take, Her Majesty's Government do not foresee that "it is likely that the course of these events would afford to the "British Government any just reason for departing from that "passive and observant attitude which the position of Great Britain "in regard to these affairs seems naturally to point out."

No. III.

ha invitato all' uopo i Governi di Francia, Austria, Due Sicilie, Portogallo, Baviera, Sardegna, e Toscana, presso i quali tutti il culto dominante è il Cattolico; ed ha indicato come possibil sede delle Conferenze, Madrid, o qualunque altra città Spagnuola sul litorale del Mediterraneo.

"Di siffatte cose il Duca di Rivas, Ambasciador di Spagna presso la Corte delle Due Sicilie, diede con nota de' 2 dello scorso Gennaio partecipazione al Governo di Sua Maestà Siciliana.

"Sua Santità intanto, cui per le convievoli vie diplomatiche si era dal Gabinetto Spagnuolo fatta la simile partecipazione, osservava esser meglio spediente che il Congresso si riunisca presso la sua persona, come principalmente interessata nello affare; osservava che Madrid o qualunque altra città di Spagna sarebbero forse eccentriche, e mal risponderebbero alla urgenza delle circostanze ed alla indispensabil rapidità di comunicazioni; ed incaricava il suo Nunzio a Madrid di manifestare a quel Governo tali sue osservazioni.

"Il Rè delle Due Sicilie ha applaudito al nobil pensiero di un Congresso, cui scopo sarà di restituire al Capo della Chiesa Cattolica lo indipendente esercizio delle sue altissime e sacrosante funzioni. Conformandosi però, circa la sede delle Conferenze, a' desideri espressi da Sua Santità ha offerto Napoli per punto di riunione, Napoli che delle città d'Italia è or la più tranquilla, ch' è vicinissima a Gaeta, e che or racchiude in se la maggior parte de' Cardinali del Sacro Collegio e de' più distinti personaggi della Corte Romana.

"Oltraccio, Sua Maestà Siciliana ha creduto necessario, e formalmente domanda la intervenzione nello enunciato Congresso dell' Inghilterra, Russia, e Prussia; la presenza di tali Grandi Potenze essendo troppo reclamata in una discussione la quale (oltre l' importantissimo oggetto della religione) potrà potente mente influire su le cose politiche e su la concordia delle Due Sicilie e della Italia intera.

"Il Sottoscritto, Inviato Straordinario e Ministro Plenipotenziario della Maestà Sua presso Sua Maestà Britannica, nel far quindi d' ordine del son Governo a sua Eccellenza il Visconte Palmerston, Principe Segretario di Stato al Dipartimento degli Affari Esteri, la sopracennata narrazione, e nel pregare l'Eccellenza sua di una risposta all' uopo, non omette rimarcarle che la premura spiegata del Rè delle Due Sicilie par la intervenzione dell' Inghilterra è una pruova della fiducia che Sua Maestà risponde ne' sentimenti amichevoli di un antico alleato, ed è un giusto onaggio che rende alla saviezza del Gabinetto de St. James.

"Il Sottoscritto, &c.

(Firmato) "CASTELCICALA."
APPENDIX IX.

No. IV.

Viscount Palmerston to Prince Castelcicala.

"Foreign Office, February 10, 1849.

"The undersigned, &c., has the honour to acknowledge the receipt of the note which Prince Castelcicala, &c., addressed to him on the 2nd instant, giving an account of what has passed with reference to a proposition made by the Court of Madrid, that the principal Roman Catholic Powers should take into their consideration with a view to their settlement the affairs of His Holiness the Pope, and calling the attention of the undersigned to the fact that the Cabinet of Naples considers it necessary, and formally demands that England, Prussia, and Russia should take part in the proposed deliberations, the matter to be treated of, independently of its religious bearing, being one calculated to have a great influence of a political character.

"The undersigned has the honour to state to Prince Castelcicala, in reply, that the Government of His Sicilian Majesty only does justice to the Government of Her Majesty in supposing that Her Majesty's Government would feel great pleasure in contributing, as far as they might probably be able to do so, to bring about such an amicable arrangement of the differences existing between the Pope and his subjects as might enable the Pope to return to Rome, and might also restore permanent contentment and tranquillity to the Roman States.

"Her Majesty's Government, however, have not received any specific application on this subject from the Pope; and until such application is made, they are unable to say what steps, if any, Her Majesty's Government might think it expedient to take in regard to these matters.

"The undersigned, &c.

(Signed)  "PALMERSTON."

_____

No. V.

Viscount Palmerston to the Marquis of Normanby.

"Foreign Office, March 9, 1849.

"(Extract.)

"Although Great Britain has not so direct an interest as France has in the ecclesiastical and political questions which arise out of the present relations between the Pope and the people of the Roman States, the British Government nevertheless cannot view those matters with indifference. Great Britain is indeed a Protestant State, but Her Majesty has many millions of Catholic subjects; and the British Government must therefore be desirous,
with a view to British interests, that the Pope should be placed
in such a temporal position as to be able to act with entire inde-
pendence in the exercise of his spiritual functions. Great Britain
is so far distant from Italy that the political events of the Italian
Peninsula cannot have the same direct bearing upon British
interests which those events must exert upon the interests of
nearer States; but still as those events must always have a
powerful influence upon matters involving questions of peace or
war in Europe, the British Government must necessarily watch
those events with much attention and anxiety.

The present condition of the relations between the Pope and
the people of his States has therefore been looked at with deep
solicitude by Her Majesty's Government. It would have been
the earnest wish of Her Majesty's Government, both on general
principles and with reference to the particular circumstances of
the case, that the differences between the Pope and his subjects
should have been adjusted by negotiation, either between the
Pope and his subjects directly, or by means of the interposition
of friendly Powers. A direct negotiation between the Pope and
his subjects seems now to have been rendered impossible by the
course of events at Rome, and by the tendency of those counsels
which there is reason to think are suggested to the Pope by the
persons who surround him at Gaeta. But Her Majesty's Govern-
ment do not see, even in the recent occurrences at Rome, any
reason for giving up the hope that the diplomatic interposition of
friendly Powers might still, without any actual employment of
military force, bring about such a settlement of differences as
would enable the Pope to return to Rome and to resume his
temporal authority; and Her Majesty's Government, deprecating
as they do, on principle, the employment of a foreign military
force to settle internal dissensions in a State except in extreme
and peculiar cases, would greatly rejoice if the Powers to whom
the Pope has now appealed for assistance to extricate him from
his difficulties, were to try the effect of their moral influence at
Rome, before they resorted to any other more active measures.

It seems to Her Majesty's Government that a strong and unani-
mous manifestation of the opinion of those Powers in support
of order on the one hand, and of constitutional rights on the
other, would bring to reason the minority who now exercise
paramount authority at Rome; and would give courage and con-
fidence to the majority who have been hitherto intimidated and
overborne; and if Great Britain had been invited to be a party
to these negotiations, and if an invitation to that effect had been
accepted, such would have been the course which Her Majesty's
Government would have recommended that the parties to the
transaction should pursue.

Her Majesty's Government have learnt with much pleasure that
"France has been included in the invitation addressed by the Pope to some of the Catholic Powers, requesting them to take an active interest in the present condition of his affairs; and Her Majesty's Government hope that if there is to be a concert among any of the Powers of Europe in regard to those affairs, the French Government will not decline the invitation to be a party thereto. There are many very obvious reasons why in several points of view it would be desirable that these matters should not be disposed of without the participation of France.

"Your Excellency says that the French Government would have preferred that Sardinia should have been invited to take part in these deliberations. Her Majesty's Government are entirely of the same opinion.

"The participation of Sardinia would mitigate the foreign character of the negotiation, and if a contingency were to arise which should lead to the employment of any military force within the Roman territory, Piedmontese troops would for many evident reasons be better suited for such purpose than the troops of Austria or of any State not belonging to the Italian Peninsula.

"The opinion then of Her Majesty's Government upon the points on which the Government of France has wished to have it is, that it would be desirable that France should be a party to the proposed deliberations, and that Sardinia should take part in them also; that it would be desirable that every endeavour should be made to bring about a settlement between the Pope and his subjects by negotiation and by moral influence before resorting to the employment of force; and that one condition of the reinstatement of the Pope ought to be that he should engage to maintain in their main and essential provisions the constitutional and representative institutions which he granted to his subjects last year."

No. VI.

The Marquis of Normanby to Viscount Palmerston.—(Received March 9.)

"Paris, March, 8 1849.

"My Lord,

"I have the honour to transmit the copy of a note I have received from the Apostolic Nuncio, inclosing one which has been addressed by the Cardinal Antonelli to the Representatives of all friendly Powers, requesting them to co-operate for the purpose of re-establishing the Papal authority at Rome.

"I have, &c.

(Signed) "Normanby."
Inclosure 1 in No. VI.

The Apostolic Nuncio to the Marquis of Normanby.

"Paris, ce 6 Mars 1849.

"M. le Marquis,

"Par suite des graves événements qui successivement se sont accomplis à Rome, le Très Saint Père s’est trouvé dans la nécessité d’adresser à toutes les Puissances amies du St. Siège une invitation formelle de coopérer au rétablissement de l’autorité du Gouvernement Pontifical comme seul moyen d’arrêter l’anarchie qui opprime les États de l’Église; et je suis chargé par ordre exprès de Sa Sainteté de transmettre ci-joint à votre Excellence la copie de la note de son Eminence M. le Cardinal Secrétaire d’État, en vous priant, M. l’Ambassadeur, de la porter à la connaissance du Gouvernement de Sa Majesté Britannique, et d’y joindre vos bons offices pour l’accomplissement des vues du Très Saint Père.

"Sa Sainteté aîme à espérer qu’elle trouvera dans les dispositions des Puissances amies un secours efficace qui puisse satisfaire aux vœux, aux prières réitérées de l’immense majorité de ses fidèles sujets, demandant tous d’être soulagés des violence et des oppressions dont ils sont l’objet de la part d’une faction audace et impie.

"Le Saint Père qui a été très touché de l’intérêt et des sympathies que Sa Majesté la Reine d’Angleterre, votre Auguste Souveraine, a bien voulu lui témoigner par la lettre qu’elle lui a adressée au mois de Janvier dernier, est conforté de la pensée que le Gouvernement de Sa Majesté, qui s’intéresse vivement à l’ordre et à la paix de l’Europe, voudra dans les circonstances actuelles prêter le meilleur concours pour faire cesser un état de choses si nuisible à la paix générale et au bonheur des peuples, et appuyer de sa puissante influence le concours réclamé pour le rétablissement du pouvoir légitime du Saint Père dont indépendance est plus que jamais nécessaire pour l’exercice de son autorité dans le Monde Catholique.

"Veuillez, M. le Marquis, je vous prie, transmettre le plus promptement possible ma communication à votre Gouvernement, et recevez, &c.

(Signé) "R. ARCHEVÈQUE DE NICÉE,
"Nonce Apostolique."

Inclosure 2 in No. VI.

Cardinal Antonelli to the Representatives of Foreign Powers.

"Gaeta, 18 Febbraio, 1849.

"La Santità di nostro Signore, fino dai primordii del suo Pontificato, non ebbe altro in mira che di prodigare beneficenze verso
"i suoi sudditi a seconda dei tempi, provvedendo ad ogni loro mi-
glior bene. In fatti dopo aver pronunziato la parola del perdono
da coloro che per delitti politici o erano esuli o giacevano nel
carcere, dopo aver eretta la Consulta di Stato ed istituito il Con-
siglio de' Ministri, accordata per la imperiosa violenza delle cir-
costanze la istituzione della Guardia Civica, la nuova legge per
una onesta libertà della stampa, ed infine uno statuto fonda-
mentale per gli Stati di Santa Chiesa, aveva egli ben diritto a
quella riconoscenza che i sudditi devono ad un Principe, il quale
non lì riguardava che come suoi figli, e non prometteva loro se
non un regno di amore. Ma ben altro fu il ricambio che ritrasse
da tanti benefici e condiscendenze loro prodigate. Dopo brevi
dimostrazioni di plauso, guidate però da chi già aveva nel seno le
più ree intenzioni (dimostrazioni che il Santo Padre con i modi
tutti propri del paterno suo cuore procurò di far cessare) ben
tosto sperimentò l’amaro frutto della ingratitudine. Violentato
egli della flagranza di una azione ad impugnarvisi in una guerra
contro l’ Austria, si trovò costretto di pronunciare una allocuzione
nel Concistoro dei 19 Aprile dello scorso anno, con la quale di-
chiarò al mondo intero che il suo dovere e la sua coscienza nel con-
sentivano. Tanto bastò perché prorompessero le già predisposte
macinazioni in aperte violenze all’esercizio del suo pieno e libero
potere, costringendolo alla divisione del Ministero di Stato in
ecclesiastico e civile, divisione che non mai riconobbe.
"Si confidava però il Santo Padre che ponendo ai diversi Mini-
steri persone idonee ed amanti dell’ ordine, fossero le cose per
prendere migliore andamento, e si arrestassero in parte quei mali
che già minacciavano sciagure. Ma un ferro micidiale, brandito
da mano assassina, troncò le concepite speranze con la morte del
Ministro Rossi. Da questo delitto menato in trionfo, si inaugurò
impeudentemente il regno della violenza; si circondò di armati il
Quirinale, lo si tentò d’incendio, si esplosero colpi contro gli
appartamenti ove dimorava il Sommo Pontefice, e si ebbe il dolore
di vedere che uno dei segretari ne rimanesse vittima; volevasi
infine col cannone aprire a viva forza il suo palazzo, laddove non
cedesse ad ammettere il Ministero che gli veniva imposto.
"Con una serie di fatti si atroci, come a tutti è ben noto, avendo
dovuto soccombere all’ impero della forza, si vide il Pontefice
nella dura necessità di allontanarsi da Roma e da tutto lo Stato
Pontificio, a fine di ricuperare quella libertà che gli era stata tolta,
e di cui deve godere nel pieno uso della suprema sua potestà. Per
disposizione della Divina Provvidenza riparatosi a Gaeta, ed ospita-
to da un Principio eminentemente Cattolico, circondata da un gran
del Sagro Collegio e dai Rappresentanti di tutte le Potenze con
le quali è in amichevoli rapporti, non tardò un momento a fare
sentire la sua voce ad annunziare coll’ atto Pontificio del 27 No-
vembre prossimo passato i motivi della temporanea separazione
dai suoi sudditi, la nullità e la illegalità di tutti gli atti emanati
dal Ministero estorto dalla violenza, ed a nominare una com-
missione governativa purchè assumeresse la direzione dei pubblici
affari durante l'assenza dai suoi Stati.

Per nulla apprezzandosi la emanazione de' suoi voleri, e pro-
curandosi con mendicati pretesti di eludere la loro forza presso la
classe insospettita, si passò dagli autori delle sagraleghe violenze ad
attentati maggiori, arrogandosi quei diritti che al Sovrano solo si
appartengono, con l'istituzione di una illegittima rappresentanza
governativa col titolo di provvisoria e suprema Giunta di Stato.

Contro il quale gravissimo e sagralego misfatto il Santo Padre
solenne protestò, con l'altro suo atto del 17 Dicembre questo
passato, annunziando non essere quella Giunto di Stato se
non una usurpazione dei sovrani poteri, ne avere perciò alcuna
autorità.

Si avvertiva egli che tali protesto richiamassero ai doveri di
fedeltà e di sudditanza i traviati, ma invece un nuovo e più mo-
struoso atto di palese fellonia, di vera ribellione colmò la sua
amarezza. Tale fu la convocazione di un' assemblea generale
nazionale dello Stato Romano, per stabilire nuove forme politiche
da darsi agli Stati della Santa Sede. Laonde con altro Moto
Proprio del 1° dell' ora decorso Gennajo protestò contro quell' 
atto, e lo condannò qual enorme e sagralego attentato commesso
in pregiudizio della sua indepenenza e sovranità meritevole dei
gastighi comminati delle leggi si divene come umane, e viciò ad
ognuno de' suoi sudditi il prendervi parte, avvertendoli che chi
unque osa attentare contro la temporale sovranità dei Sommi
Pontefici Romani, incorre nelle censure e specialmente nella
scommunica maggiore, pena nella quale dichiarò essere incorsi
coloro aziandio che in qualunque modo e sotto mentito pretesto
hanno violata ed usurpata la sua autorità.

Come si accogliesse dal partito simile protesta e si autorevole
condanna, basterà l'accennare che si tentò ogni sforzo per impe-
dirne la divulgazione, si sottopose a gastighi chi osasse istruirne
il popolo, chi non secondasse le loro mire, tuttavia ad onta di si
maudità violenza la maggiorità dei sudditi rimase fedele al proprio
Sovrano, e si espose a sagraleghe e ad pericoli ancora della vita,
piuttosto che mancare al dovere di suddito e di Cattolico. In-
asperito maggiormente il partito medesimo nel vedere contrariati i
loro disegni, raddoppiarono in mille modo la violenza ed il terrore,
 senza riguardo alcuno a condizione o grado, ma volendosi con-
sumare ad ogni costo questo eccesso di fellonia si ricorsero pure alle
arti le più vili e mercenarie. Così passando di eccesso in eccesso,
con abusare delle stesse beneficenze concesse dal Pontefice, e spe-
cialmente convertendo nella più ributtante licenza la libertà della
stampa, dopo le più inique malversazioni per premiare i loro com-
plici e non più tollerare la presenza deglionesti e timorati, dopo
APPENDIX IX.

"tanti assassini commessi sotto la loro egide, dopo aver disseminato ovunque la ribellione, il mal costume, la irreligione, dopo aver sedotta tanta gioventù incauta, non più rispettando i luoghi sagri e gli asili di pace e di solitudine, ne' i luoghi stessi di pubblico insegnamento per convertirli in covili della più indisciplinata milizia raccolta da profughi e scellerati di estere contrade, si vuol ridurre la capitale del mondo Cattolico, la sede dei Pontefici, in una sede di empietà, atterrando, se fosse possibile, ogni idea di sovranità in chi dalla provvidenza è destinato a reggere la Chiesa universale, e che appunto per esercitare liberamente questa sua autorità su tutto l’orbe Cattolico, gode di uno stato come patrimonio della Chiesa; alla quale vista di desolazione e di strage non può il Santo Padre non rimanere profondamente adolorato, commosso altresì dal grido de' suoi buoni sudditi, che reclamano il suo ajuto, il suo soccorso per essere liberati dalla più atroce tirannia.

"La Santità Sua, com' è palese, poco dopo giunta in Gaeta, sotto il giorno 4 Dicembre prossimo passato, diresse la sua voce a tutti li Sovrani coi quali è in relazione, e dando lor parte del suo allontanamento dalla capitale e dallo Stato Pontificio, e delle cause che lo provocarono, invocava il loro patrocinio per la disfesa dei domini della Santa Sede. Ed è pure di dolore soddisfazione il manifestare di avere presso che tutti amorevolmente corrisposto, prendendo la più viva parte alle sue amarezze, alla penosa sua situazione, offrendosi pronti in suo favore, ed esternando al tempo stesso sensi ossequiosissimi di devozione e di attaccamento.

"Nella espettativa di si felici e generose disposizioni, mentre Sua Maestà la Regina di Spagna aveva con tanta sollecitudine promosso un Congresso delle Potenze Cattoliche per determinare i mezzi onde prontamente ristabilire il Santo Padre ne' suoi Stati, e nella sua piena libertà ed indipendenza, proposizione alla quale avevano prestato adesione varie Potenze Cattoliche, e stavansi in attenzione di quella delle altre, è pur d' uopo con dolore riferire, che le cose dello Stato Pontificio sono in preda di un incendio devastatore per operar del partito sovvertitore di ogni sociale istituzione, che sotto speziosi pretesti di nazionalità ed indipendenza nulla ha trascurato di porre in opera per giungere al colmo della loro nequizia. Il decreto, detta fondamentale, emanato nel di 9 corrente, dall' Assemblea Costituente Romana offre un' atto che da ogni dove ribocca della più nera fellonia e della più abominevole empietà. Con esso dichiarasi principalmente decaduto il Papato di fatto e di diritto dal governo temporale dello Stato Romano, si proclama una repubblica, e con altro atto si decreta l' abbassamento degli stemmi del Santo Padre. Sua Santità nel vedere così vilipesa la suprema sua dignità di Pontefice e Sovrano, protesta in faccia ai Potentati tutti, ed a tutti i singoli
Cattolici del mondo universo, contro questo eccesso d'irreligione, contro si violento attentato di spoglio degli imprescrittibili e sagrantali suoi diritti. Quindi laddove non si accorresse con un pronte riparo, giungerebbe il soccorso allorquando gli Stati della Chiesa, ora interamente in preda de' suoi acerrimi nemici, fossero ridotti in cenere.

Pertanto avendo il Santo Padre esauriti tutti i mezzi che erano in suo potere, spinto dal dovere che ha al cospetto di tutto il mondo Cattolico di conservare integro il patrimonio della Chiesa e la sovranità che vi è annessa, così indispensabile a mantenere la sua piena libertà ed independenza come capo supremo della Chiesa stessa, e mosso altresì dal genito dei buoni che reclamano altamente un ajuto, non potendo più oltre sopportare un giogo di ferro ed una mano tirannica, si rivolge di nuovo a quelli stesse Potenze, e specialmente a quelle Cattoliche che con tanta gene-

rosità di animo, ed in modo non dubbio hanno manifestata la loro decisa volontà di esser pronte a difendere la sua causa, nella certezza che verranno con ogni sollecitudine concorrere con il loro morale intervento, affinché venga egli restituito alla sua sede, alla capitale di quei domini che furono appunto costituiti a mantenere la sua piena libertà ed indipendenza e garantiti eziando dai trattati che formano la base del diritto pubblico Europeo.

E poiché l'Austria, la Francia, la Spagna, ed il Regno delle Due Sicilie si trovano per la loro posizione geografica in situa-
zione di potere sollecitamente accorrere con i loro armi a ristabilire nei domini della Santa Sede l'ordine manomesso da un' orda di settarii, così il Santo Padre, fidando nel religioso interesse di queste Potenze figlie della Chiesa, domanda con piena fiducia il loro intervento armato per liberare principalmente lo Stato della Santa Sede da quella fazione di tristi che con ogni sorta di scelleraggine vi esercita il più atroce despo-
tismo.

Per tal modo solo potrà essere ripristinato l'ordine negli Stati della Chiesa, e restituito il Sommo Pontefice al libero esercizio della suprema sua autorità, siccome lo esigono imperiosamente il sagro ed augusto suo carattere, gl' interessi della Chiesa universale, e la pace dei popoli; e così potrà egli conservare quel patrimonio che ha ricevuto nell' assunzione del Pontificato per trasmetterlo integro ai suoi successori. La causa è dell' ordine e del Cattolicismo. Per la qual cosa il Santo Padre si confida che mentre tutti le Potenze con cui si trova in amichevoli relazione, e che in tanti modi nella situazione in che è stato gettato da un partito di fazzosì, gli hanno manifestato il loro più vivo interesse daranno un' assistenza morale all' intervento armato, che per la gravità delle circonstanze ha dovuto invocare, le quattro Potenze di sopra accennate non indugieranno un momento di prestare
APPENDIX IX.

"l' opera loro richiesta, rendendosi così benemerite dell' ordine pubblico e della religione.

"Il Sottoscritto, Cardinale Pro-Segretario di Stato di Sua Santità, interessa per tanto vostra Eccellenza affinchè si compiacia portare questa nota il più sollecitamente possibile a cognizione del suo Governo; e nella fiducia di benevola accoglienza, ha "l'onore, &c."

No. VII.

Viscount Palmerston to the Marquis of Normanby.

"Foreign Office, March 27, 1849.

"My Lord,

"I have received your Excellency's despatch of the 8th instant, transmitting to me the copy of a note which your Excellency had received from the Apostolic Nuncio, inclosing the copy of the note which has been addressed by Cardinal Antonelli to the Representatives of all friendly Powers, requesting them to cooperate for the purpose of re-establishing the Papal authority at Rome.

"I have to instruct your Excellency to say to the Nuncio that Her Majesty's Government have received and have attentively considered the communication which he has made to them through your Excellency, and that you are instructed to express to him the deep regret with which Her Majesty's Government have witnessed the differences which have arisen between the Pope and his subjects, the assassination of Count Rossi, the departure of the Pope from his capital and States, and the proclamation of a Republic at Rome.

"The British Government is, for many obvious reasons, not desirous of taking an active part in any negotiations which may result from the application which the Pope has addressed to some of the Catholic Powers of Europe, whose territories are nearer than Great Britain in geographical proximity to the Italian Peninsula. But the British Government will be much gratified if the result of those negotiations should be such a reconciliation between the Pope and his subjects as might enable the former with the free good-will and consent of the latter to return to his capital, and there to resume his spiritual functions and his temporal authority. But it is the opinion of Her Majesty's Government that such a reconciliation could scarcely be effected, or if effected for the moment, could never be permanent, unless the basis upon which it was founded were to be that the Pope should engage to maintain the constitutional and representative system of government which he granted last year to his subjects, and unless the separation between the spiritual authority and the temporal powers and institutions of the State were so clearly and
APPENDIX IX.

so distinctly established as to put an end to those manifold grievances which the mixture of the spiritual with the temporal power has for so long a period of time produced in the Roman States. The great importance of admitting laymen to administrative and judicial functions in the Roman States was pointed out to the late Pope by the Memorandum presented in 1832 to the Roman Government by the Representatives of Austria, France, Great Britain, Prussia and Russia, and the events which have happened since that time, not only in the Roman States but in the rest of Europe, have tended to make it still more important that such a reform should be carried out into full and complete execution.

Your Excellency will give the Nuncio a copy of this dispatch.

I am, &c.

(Signed) Palmerston.

No. 4.

On the 12th of July, 1859, Antonelli addressed to the representatives of the Papal Government at foreign Courts a circular, in which he dwelt upon the evils brought upon the Papacy by the revolution in Italy and the assistance given to it by the "King of Piedmont," and then invoked the forcible intervention of foreign States to keep the Pope on his throne, as follows:—

All the measures taken with the view of preventing or extenuating this series of evils having been in vain, the Holy Father, not forgetful of the duties incumbent upon him for the protection of the States and for the preservation in its integrity of the temporal domain of the Holy See, which is essentially connected with the free and independent exercise of the Supreme Pontificate, protests against the violations and usurpations committed, in spite of the acceptance of neutrality, and desires that his protest may be communicated to all the European Powers. Confident in the justice which distinguishes these Powers, he feels assured that they will support him, that they will not permit the success of a manifest violation of the law of nations and the rights of the Holy Father. He trusts that they will not hesitate to co-operate in the vindication of those rights, and to that end he invokes their assistance and protection" (b).

On the 3rd of September, 1859, the Assembly of Romagna adopted the following resolution, by which they formally cast off their allegiance to the Pope:

Considering that the people of Romagna, after having in former centuries lived under their own statutes and laws, and in the beginning of the present century formed part of a civil kingdom, were in 1815 placed under the temporal government of the Pope against their will; considering that that Government, while it did not revive the old privileges, destroyed the good institutions of

"the Italian kingdom, and afflicted its subjects by its bad administra-
tion, well known to Europe; considering that from that moment
the history of these provinces became a painful succession of
revolutions and reactions, so that at length exceptional measures
and the state of siege became the ordinary rule of government;
considering that this produced serious evils, not only by destroy-
ing public prosperity, but also by overthrowing the moral sense of
the people, with incessant danger to the tranquillity of Italy and
Europe; considering that every attempt at reform was vain, that
the prayers of the people remained unheard, as well as the advice
of the Potentates of Europe, and that the promises made were
never kept; considering that the said Government has been found
to be incompatible with Italian nationality, with civil equality and
political liberty; considering that it was not even able to defend
the lives and property of its subjects; considering that it abdicated
its sovereignty de facto, giving up its noblest prerogatives
into the hands of Austrian Generals, who for many years held the
civil and military government of these provinces in their hands,
and conducted it ill; considering that it cannot support itself by
its own strength, but only by foreign or mercenary armies, and
has therefore become incompatible with public tranquillity and
permanent order; lastly, considering that the temporal govern-
ment of the Pope is substantially and historically distinct from
the spiritual government of the Church, which these populations
will always respect, we, representatives of the people of Romagna,
convoked in general assembly, and calling God to witness as to
the rectitude of our intentions, declare that the people of Romagna
refuse to live any longer under the temporal sway of the Pontiff” (e).

No. 5.

ENCYCLIC AND SYLLABUS, DECEMBER, 1864 (d).

"Die VIII. December, MDCCCLXIV.

"SS. Dominii nostri PII IX.

"EPISTOLA ENCICLICA.

"Venerabilibus Fratribus Patriarchis, Primatibus, Archiepiscopis
et Episcopis Universis Gratiam et Communionem Apostolice Sedis Habentibus.

"PIUS PAPA IX.

"Venerabiles Fratres,

"Salutem et Apostolicam Benedictionem.

"Quanta cura ac pastoralis vigilantia Romani Pontifices Prædecessores Nostri, exsequentes demandatum sibi ab ipso Christo Domino.

(d) See pp. 374, 399, 416.
"in persona Beatissimi Petri Apostolorum Principis officium, manus-
que pascedi agnos et oves nunquam intermissis universum
"Dominicum gregem sedulo onuiri verbis fidei, ac salutari doctrina
"imbuere, eumque ab venenis passui arcere, omnis quidem ac
"Vobis presertim compertum, exploratumque est, Venerabiles Fratres,
"Et sane idem Decessores Nostrae, Augustae catholicæ religionis,
"veritatis ac justitiae assertores et vindicæ, de animarum salute
"maxime solliciti nihil potius unquam habuere, quam sapientissimis
"suis Litteris, et Constitutionibus retignere damnae omnes haereses
"et errores, qui Divinæ Fidei nostræ, catholicæ Ecclesiæ doctrinae,
"morum honestati, ac sempiternæ hominum saluti adversi, graves
"frequentem excitandum tempestates, et Christianam civilenque rem-
"publicam miseraunders in modum finemarunt. Quocirca idem
"Decessores Nostræ Apostolica fortitudine continentur obstiterunt
"nafaris iniquorum hominum molitionibus, qui despumantes tam-
quan fluctus feri maris confusiones suas, ac libertatem promit-
tentes, cum servi sint corruptionis, fallacios suis opinionibus, et
"perniciosissimis scriptis catholicæ religionis civilisque societatis
"fundamenta convellere, omnemque virtutem ac justiam de medio
tollere, omniumque animos mentesque depravare, et incautos im-
peritamque presertim juventutem a recta morum disciplina aver-
tere, eumque miserabiliter corrumpere, in erroris laqueos inducere,
"ac tandem ab Ecclesiæ catholicæ sinu avellere conati sunt.
"Jam vero, uti Vobis, Venerabiles Fratres, apprime notum est,
"Nos vix dum arcanæ Divine Providentiae consilio nullis certe
"Nostræ meritis ad hanc Petri Cathedram evecti fuit, cum vide-
"remus summæ animi Nostræ dolore horribilem sane procellam tot
"pravis opinionibus excitatem, et gravissimæ, ac nunquam satis
"Ingenda damna, quæ in christianum populum ex tot erroribus
"redundant, pro Apostolici Nostræ Ministerii officio illustria Præde-
cessorum Nostrorum vestigia sectoræ Nostræm extulimus vocem,
"ac pluribus in vulgus editis Encyclicis Epistolæ et Allocutionibus
"in Consistorio habitis, alisque Apostolicæ Litteræ præcipuæ
"tristissimæ nostræ ætatis errores damnauimus, eximiamque vestram
"episcopalem vigilantiam excitavimus, et universos catholicæ
"Ecclesiæ Nobis carissimos filios etiam atque etiam monuimus et
"exhortati sumus, ut tam diræ contagia pestis omnino horrent et
"devinet. Ac presertim Nostra prima Ecyclia Epistola die
"9 Novembris anno 1846 Vobis scripta, binisque Allocutionibus,
"quarum altera die 9 Decembris anno 1854, altera vero 9 Junii
"anno 1862 in Consistorio a Nobis habita fuit, monstrosa opinionum
"portenta damnauimus, quàe habessimur ætate cum maximo
"animarum damno, et civilis ipsius societatis detrimento dominautur,
"queaque non solum catholicæ Ecclesiæ, ejusque salutari doctrinae ac
"venerandis jurisibus, verum etiam sempiternæ naturali legi a Deo in
"omnium cordibus insculptæ, rectæque ratione maxime adversantur,
"et ex quibus aliis prope omnes originem habent errores.
iti autem haud omiserimus potissimos hujusmodi errores
sepe proscribere et reprobare, tamen catholicae Ecclesiae causa,
animarumque salus Nobis divinitus commissa, atque ipsius humanae
societatis bonum omnino postulans, ut iterum pastoralem vestram
sollictitudinem excitemus ad alias pravas profligandas opiniones, quo
ex eisdem erroribus, veluti ex fontibus erumpunt. Quae false ac
perverse opiniones eo magis detestandae sunt, quod eo potissimum
spectant, ut impediatur et amoveatur salutaris illa vis, quam
catholica Ecclesia ex divini sui Auctoris institutione et mandato,
libere exercere debet usque ad consummationem secuti non
minus erga singulos homines, quam erga nationes, populos sum-
mosque eorum Principes, utque de medio tollatut mutua illa inter
Sacerdotium et Imperium consiliorum societatis et concordia, qua
rei cum sacra tum civili fausta semper extitit ac salutaris. [Gregor.
XVI. Epist. Encycl. 'Mirari.' 15 Aug. 1832.] Etnim probe
noscitis, Venerabiles Fratres, hoc tempore non paucos reperiri,
quicivili consortio impium absurdistumque naturalismi, uti vocant,
principium applicantes audent docere, 'optimam societatis pub-
lica rationem, civilisque progressum omnino requirere, ut humana
societas constituirat et guberetur, nullo habito ad religionem
respectu, ac si ea non existaret, vel saltum nullo facto veram inter
falsaque religiones discrimine.' Atque contra sacrarum Litté-
rarum, Ecclesiae, sanctorumque Patrum doctrinam, asserrere non
dubitans, 'optimam esse conditionem societatis, iu qua Imperio
non agnoscitur officium coercendi sanctis poenis violatores catho-
licae religionis, nisi quatenus pax publica postulet.' Ex qua
omnino falsa socialis regimen idea haud timent erroneam illam
fovere opinionem catholicae Ecclesiae, animarumque saluti maxime
exitialem a rec. mem. Gregorio XVI. Predecessore Nostro delire-
mentum appellatam [Eadem Encycl. 'Mirari'], nimium 'liber-
tatem conscientiae et cultuum esse proprium censumque hominen
jus, quod lege proclamari et asserti debet in omni recte constituta
societate, et jus civilibus inesse ad omnimodam libertatem nulla
vel ecclesiastica, vel civili auctoritate coercendam, quo suos
conceptus quoscumque sive voce, sive typis, sive aliis ratione
palam publicaque manifestare ac declarare valeat.' Dum vero
id temere affirmant, haud cogitant et considerant, quod libertatem
humanis persuasionibus semper discipare sit liberum, nunquam
deesse poterunt, qui veritati audeant resultare, et de humanae
sapientiae loquacitate confidere, cum hanc nocentissimam vanitatem
quantum debat fides et sapientia christianae vitare, ex ipsa Domini
nostri Jesu Christi institutione cognoscat. [S. Leonis Epist. 164,
al. 133, § edit. Ball.]

Et quoniam ubi a civili societate fuit anota religio, ac repudiata
divinae revelationis doctrina et auctoritas, vel ipsa germana justitiae
humanique juris notio tenebris obscuratur et amittitur, atque in
APPENDIX IX.

"veræ justitiae legitimique juris locum materialis substituitur vis,
"inde liquet cur nonnulli certissimis sanæ rationis principis penitus
"negle cetis posthabitisque audeant conclamare, *voluntatem populi,
"publica, quam dicunt, opinione vel alia ratione manifestatam
"constituere supremam legem ab omni divino humanoque jure
"solutam, et in ordine politico facta consummata, eo ipso quod
"consummata sunt vim juris habere." Verum ecquis non videt,
"planeque sentit, hominem societatem religionis ac veræ justitiae
"vinculis solutam nullum aliud profecto propositum habere posse,
" nisi scopum comparandi, cumulandique opes, nullamque aliam in
"suis actionibus legem sequi, nisi indomitam animi cupiditatem
"inserviendi propriis voluptatibus et commodis? Eapropert hujus-
"modi homines acerbo sane odio insectantur Religiosas Familias
"wanuis de re christiana, civili, ac littararia summopere meritas,
"et blaterant easdem nullam habere legitimam existendi rationem,
"atque ita hereticorum commentis plandunt. Nam ut sapientissime
"rec. mem. Pius VI. Deecessor Noster docebat, 'regularium abilitio
"ledit statum publicæ professionis consiliorum evangelicorum,
"ledit vivendi rationem in Ecclesia commendatam tamquam
"Apostolicae doctrine consentaneam, ledit ipsos insignes fundatores;
"quos super alaribus veneramur, qui non nisi a Deo inspirati eas
"constituerunt societates.' [Epist. ad Card. de la Rochefoucault,
"10 Martii 1791.] Atque etiam impie pronunciant, auferendam
"esse civibus et Ecclesiae facultatem 'qua eleemosynas Christianæ
"caritatis causa palam ergore valeant,' ac de medio tollendam
"legem 'qua certis aliquibus diebus opera servilia propter Dei
"cultum prohibentur,' fallacissime praetexentes, commemoratam
"facultatem et legem optima publicæ economicæ principii obsister.
"Neque contenti amovere religionem a publica societate, volunt
"religionem ipsam a privatis etiam arcere familias. Etenim
"funestissimum Communismi et Socialismi docentes ac profientes
"errorem asserrunt 'societatem domesticae seu familias totam sue
"existentiæ rationem a jure duntaxat civili mutuari; proindeque
"ex lege tantum civilis dimanare ac pendere jura omnia parentum
"in filios, cum primis vero jus institutionis educationisque cur-
"randæ.' Quibis impii opinionibus, machinationibusque in id
"precipue intendunt fallaciaessimi isti homines, ut salutiferæ catho-
"licæ Ecclesiae doctrina ac vis a juventutis institutione et educa-
"tione prorsus eliminetur, ac teneri flexiblesque juvenum animi
"perniciosissimæ quibusque erroribus, vitiosisque misere insciantur ac
"depraventur. Squidem omnes, qui rem tum sacram, tum
"publicam perturbare, ac rectum societatis ordinem evertere, et
"jura omnia divina et humana delere sunt conati, omnia nefaria sua
"consilia, studia et operam in improvidam prassertim juventutem
"decipiendam ac depravandam, ut supra innumus, semper contu-
"lerunt, omnemque quem in ipsius juventutis corruptela collocarunt.
"Quocirca nuncum cossunt utrumque clerum, ex quo, veluti
In civili approbatione, Providas illis Ecclesiae vindicate, edire, decretis Ecclesiam principium, Benedict Ecclesiae eis usurpent, Ecclesiam. Eomanis constitutiones exigatur, utpote disciplinam Concilio Leonis civili factores independentem absolutam juramentum gressui ipsum politici, nihil nibus obligare. Namque ipsos minime pudet affirmare 'Ecclesiae leges non obligare in conscientia, nisi cum promulgantur a civili potestate; acta et decretae Romanorum Pontificum ad religionem et Ecclesiam spectantia indigere sanctione et approbatione, vel minimum assensu potestatis civilis; constitutiones Apostolicas [Clement XII. 'In eminenti,' Benedict XIV. 'Providas Romanorum.' Pii VII. 'Ecclesiam,' Leonis XII. 'Quo graviore'], quibus damnantur clandestinæ societates, sive in eis exigatur, sive non exigatur juramentum de secreto servando, earnnque asseclæ et fautores anathematæ multantur, nullam habere vim in illis orbis regionibus ubi ejusmodi aggregations tolerantur a civili gubernio; excommunicationem a Concilio Tridentino et Romanis Pontificibus latam in eos, qui jura possessionesque Ecclesiae invadunt et usurpant, niti confessione ordinis spiritualis ordinique civilis ac politici, ad mundanum damnatum bonum prosequendum; Ecclesiam nihil debere decernere, quod obstringere possit fidalium conscientias in ordine ad usum rerum temporaliæ; Ecclesia jux non competere violatores legum suarum poenit temporaliæ coercendi; conforme esse sacra theologiam, jurisque publici principii, bonorum proprietatem, quæ ab Ecclesia, a Familia religiosa, alisque locis piis possidentur, civili gubernio asserere et vindicare.' Neque erubescent palam publicque profiteri hereticorum effatum et principium, ex quo tot perverse orientur sententiae, atque errores. Dictantum enim 'Ecclesiasticam potestatem non esse jure divino distinctam et independentem a potestate civilii, neque ejusmodi distinctionem et independentiam servavi posse, quin ab Ecclesia invadantur et usurpantur essentia jura potestatis civilis.' Atque silentio praeterire non possumus eorum audaciam, qui sanam non sustinentes doctrinam contendunt 'illis Apostolicæ Sedis judiciis, et decretis quorum objectum ad bonum generale Ecclesiae, ejusdemque jura, ac disciplinam spectare declaratur, dummodo fidei morumque dogmata non attingat, posse assensum et obedientiam detrectari absque peccato, et absque ualla catholicae professionis jactura:' quod quidem quantepere adversetur catholicismo dogmati plenæ potestatis Romano Pontifici ab ipso Christo Domino divinitus collatae universalem pascendi, regendi, et guber-
nandi Ecclesiam, nemo est qui non clare aperteque videat et
intelligat.

In tanta igitur depravatarum opinionum perversitate, Nos
Apostolici Nostri officii probe memores, ac de sanctissima nostra
Religione, de sana doctrina, et animarum salute Nobis divinitus
commissa, ac de ipsius humanae societatis bono maxime solliciti,
Apostolicam Nostram vocem iterum extollere existimavimus.
Itaque omnes et singulas pravas opiniones ac doctrinas singillatim
hisce Litteris commemoratas Auctoritate Nostra Apostolica re-
probamus, proscribimus atque damnamus, easque ab omnibus
catholicæ Ecclesiae filiis, veluti reprobatas, proscriptas atque
dannatas omnino haberì volumus et mandamus.

Ac preter ea, optime sciatis, Venerabiles Fratres, hisce tempo-
ribus omnis veritatis justitiaeque oseos, et acerrimos nostræ reli-
gionis hostes, per postiferos libros, libellos, et ephemeredes toto
terram orbe dispersas populis illudentes, ac malitiose mentientes
alias impias quasque dissemiuare doctrinas. Neque ignoratis, hac
etiam nostra ætate, nonnullus reperiri, qui Satanæ spiritu permoti
et incitati eo impietatis devenurent, ut Dominatorem Dominum
Nostrum Jesum Christum negare, ejusque Divinitatem scelerata
proacitate oppugnare non paveant. Hic vero haud possimus,
quin maximis meritisque laudibus Vos effaramus, Venerabiles
Fratres, qui episcopalem vestram vocem contra tantam impietatem
omni zelo attollere minime omnisistis.

Itaque hisce Noster Litteris Vos iterum amantissime alloqui-
mur, qui in sollicitudinis Nostre partem vocati summò nobis inter
maximas Nostras acerbitates solatio, laetitia, et consolationi estis
propter egregiam, qua præstatis religionem, pietatem, ac propter
mirum illum amorem, fidem, et observantiam, qua Nobis et huic
Apostolice Sedi concordissimis animis obstricti gravissimum epi-
scopale vestrum ministerium strenue ac sedulo implere contenditis.

Etenim ab eximio vestro pastorali zelo expectamus, ut assumentes
gladium spiritus, quod est verbum Dei, et confortati in gratia
Domini Nostri Jesu Christi, velitis ingeminationis studii quotidie
magis prospiere, ut fideles curæ vestæ concretiī 'abstineant ab
herbis noxiis, quas Jesus Christus non colit, quia non sunt plan-
tatio Patrias.' [S. Ignatius M. ad Philadelph. 3.] Atque eisdem
fidelibus inculcare nunquam desinente, omnem veram felicitatem in
homines ex Augusta nostra religione, ejusque doctrina et exercitio
redundare, ac beatum esse populum, cuius Dominus Deus ejus.

[Psal. 143.] Docete 'catholicæ Fidei fundamento regna subsis-
tere [Celest. Epist. 22, ad Synod. Ephes. apud Cost., p. 1200],
et nihil tam mortiferum, tam praecip ad casum, tam expositum ad
omnia pericula, si hoc solum nobis putantes posse sufficeret, quod
liberum arbitrium, cum nascemur, accepimus, ultra jam a
Domino nihil quaramus, id est, auctoris nostri obliti, ejus poten-
tiam, ut nos ostendamus liberos, abjuremus.' [S. Innocent. I.
“Epist. 29 ad Episc. Conc. Carthag. apud Const., p. 891.] Atque
etiam ne omittatis docere ‘regiam potestatem non ad solum mundi
regimen, sed maxime ad Ecclesiae præsidium esse collatam’ [S.
Leonis Epist. 156, al. 125, et nihil esse quod civitatum Principi-
bus, et Regibus majori fructui, gloriaeque esse possit, quam si, ut
sapientissimus fortissimusque alter Predecessor Noster S. Felix
Zenoni Imperatori præscribebat, ‘Ecclesiam catholicam . . .
sinant uti legibus suis, nec libertati ejus quemquam permettant
obistere. . . . Certum est enim, hoc rebus suis esse salutare,
ut, cum de causis Dei avertatur, justa ipsius constitutam regiam vo-
Iuuntatem Sacerdotibus Christi studeant subdere, non præferre.’
[Pi VII. Epist. Encycl. ‘Diu satis,’ 15 Maii 1800.]

‘Sed si semper, Venerabiles Fratres, nunc potissimum in tantis
Ecclesiis, civilisque societatis calamitatibus, in tanta adversariorum
contra rem catholicam, et hanc Apostolicam Sedem conspiratione
tantaque errorum congerie, necesse omnino est, ut adeamus cum
fiducia ad thronum gratiae, ut misericordiam consequamur, et
gratiam inveniamus in auxilio opportuno. Quocirca omnium
fidelium pietatem excitare existimavimus, ut una Nobiscum
Vobisque elementissimum luminum et misericordiarum Patrem
ferventissimis humillimisque precibus sine intermissione orant, et
obsecrant, et in plenitudine fidei semper confugiant ad Dominum
Nostrum Jesum Christum, qui redemit nos Deo in sanguine suo,
Ejusque dulcisissimum Cor flagrantissimae erga nos caritatis victi-
mam enixe jugiterque exortem, ut amoris sui vinculis omnia ad
seipsum, trahat, utque omnes homines sanctissimo suo amore in-
flammati secundum Cor Ejus ambulent digne Deo per omnia pla-
centes, in omni bono opere fructificantes. Cum autem sine dubio
gratiores sint Deo hominum preces, si animis ab omne labe puris
ad ipsum accedant, idcirco celestes Ecclesiae thecauros dispensa-
tioni Nobis commissos Christi fidelibus Apostolica liberalitate
reserare censimus, ut iidem fideles ad veram pietatem vehemen-
tius incensi, ac per Penitentiam Sacramentum a peccatorum maculis
expiati, fidentius suas preces ad Deum effundant, ejusque miseri-
cordiam et gratiam consequuntur.

‘Hisce igitur Litteris auctoritate Nostra Apostolica omnibus et
singulius utrasque sexus catholici orbis fidelibus Plenaria Indul-
geniam ad instar Jubilaei concedimus intra unius tantum mensis
spatium usque ad totam futurum annum 1865 et non ultra, a
Vobis, Venerabiles Fratres, aliisque legitimis locorum Ordinariis
statuendum, eodem prorsus modo et forma qua ab initiis suprini
Nostrī Pontificatus concessimus per Apostolicas Nostras Litteras
in forma Breviar die 20 mensis Novembris anno 1846 datas, et ad
universum episcopalem vestrum Ordinem missas, quarum initium
‘Arcano Divinae Providentiae consilio,’ et cum omnibus eisdem
facultatibus, quae per ipsas Litteras a Nobis data fuerunt. Volu-
mus tamen, ut ea omnia serventur, quae in commemoratis Litteris
prascripta sunt, et ea excipiantur, quae excepta esse declaravimus.

Atque id concedimus, non obstantibus in contrario facientibus quibuscumque, etiam speciali et individuo mentione ac derogatione dignis. Ut autem omnis dubitatio et difficultas amoveatur, earundem Litterarum exemplar ad Vos perferri, jussimus.


Denique caelestium omnium donorum copiam Vobis a Deo ex animo adprecantes, singularis Nostræ in vos caritatis pignus Apostolicam Benedictionem ex intimo corde profectam Vobis ipsis, Venerabiles Fratres, eunctisque Clericiis, Laiciisque fidelifus curæ vestre commissis peramanter impetrimus.

Datum Rome apud S. Petrum die VIII. Decembris anno 1864, decimo a Dogmatica Definitione Immaculatæ Conceptionis Deiparæ Virginis Mariæ.

Pontificatus Nostri anno decimono.

"Pius PP. IX."
SYLLABUS

I. Nullum supremum, sapientissimum, providentissimumque Numen divinum existit ab hac rerum universitate distinctum, et Deus idem est ac rerum natura, et iccirco immutationibus obnoxius; Deusque reapse fit in homine et mundo, atque omnia necessitas cum libertate, verum cum falso, bonum cum malo, et justum cum injusto.

II. Neganda est omnis Dei actio in homines et mundum.

III. Humana ratio, nullo prorsus Dei respectu habitu, unicus est veri et falsi, boni et mali arbitrer, sibi ipsi est lex, et naturalibus suis viribus ad hominum ac populorum bonum curandum sufficit.

IV. Omnes religionis veritatis ex nativa humanæ rationis vi derivant; hinc ratio est princeps norma qua homo cognitionem omnium cujuscumque generis veritatum assequi possit ac debeat.

V. Divina revelatio est imperfecta et iccirco subjecta continuo et indefinito progressui qui humanæ rationis progressioni respondet.

VI. Christi fides humanae refragatur rationi; divinaque revelatio non solum nihil prodest, verum etiam nocet hominis perfectioni.

VII. Prophetiae et miracula in sacris Litteris exposita et narrata sunt poetrarum commenta, et Christianæ fidei mysteria philosophicarum investigationum summula; et utriusque Testamenti libris mythica continentur inventa; ipseque Jesus Christus est mythica fictio.
"§ II.

"Rationatismus moderatus.

"VIII. Quum ratio humana ipsi religioni æquiparetur, iccirco "theologicæ disciplinae perinde ac philosophicæ tractandæ sunt.

" Alloc. Singularis quadam perfusi 9 decembris 1854.

" IX. Omnia indiscriminatim dogmata religionis Christianæ sunt "objectum naturalis scientiæ seu philosophiæ; et humana ratio "historica tantum exculta potest ex suis naturalibus viribus et "principiis ad veram de omnibus etiam recensiditoribus dogmatibus "scientiâ pervenire, modo haec dogmata ipsi rationi tamquam "objectum proposita fuerint.


" Epist. ad eumdem, Tuas liberent 21 decembris 1863.

" X. Quum alius sit philosophus, alius philosophia, ille jus officium habet se submittendi auctoritati, quam veram ipse pro-baverit; at philosophia neque potest, neque debet ulla sese "submittere auctoritati.


" Epist. ad eumdem, Tuas liberent 21 decembris 1863.

" XI. Ecclesia non solum non debet in philosophiam unquam "animadvertere, verum etiam debet ipsius philosophiæ tolerare "errores, eique relinquire ut ipsa se corrigit.


" XII. Apostolicae Sedis Romanarumque Congregationum decreta "liberum scientiæ progressum impediunt.


" XIII. Methodus et principia, quibus antiqui doctores scholasticí "Theologiam excoluerunt, temporum nostrorum necessitatis "scientiarumque progressui minime congruent.


" XIV. Philosophia tractanda est nulla supernaturalis revelationis "habita ratione.


"§ III.

"Indifferentismus, Latitudinarismus.

" XV. Liberum cùique homini est eam amplecti ac profiteri reli-gionem, quam rationis lumine quis ductus veram putaverit.

" Litt. Apost. Multiplices inter 10 iunii 1851.

" Alloc. Maxima quidem 9 iunii 1862.
"XVI. Homines in cujusvis religionis cultu viam æternæ salutis reperire æternamque salutem assequi possunt.

" Epist. encycl. Qui pluribus 9 novembris 1846.
" Alloc. Úbi primum 17 decembris 1847.
" Epist. encycl. Singulari quidem 17 martii 1856.

"XVII. Saltem bene sperandum est de æterna illorum omnium salute, qui in vera Christi Ecclesia nequaquam versantur.

" Alloc. Singulari quadam 9 decembris 1854.
" Epist. encycl. Quanto conficiamur 17 augusti 1863.

"XVIII. Protestantismus non aliud est quam diversa ejusdem Christianae religionis forma, in qua æque ac in Ecclesia Catholica Deo placere datum est.

" Epist. encycl. Noscit et Nobiscum 8 decembris 1849.

"§ IV.

"Socialismus, Communismus, Societaes clandestinaæ, Societaes biblicæ, Societaesclericoliberales.


"§ V.

"Errores de Ecclesia ejusque juribus.

"XIX. Ecclesia non est vera perfectaæ societas plane libera, nec pollet suis propriis et constantibus juribus sibi a divino suo Fundatore collatis, sed civilis potestatis est definire quæ sint Ecclesiae jura ac limites, intra quos eadem jura exercere queat.

" Alloc. Singulari quadam 9 decembris 1854.
" Alloc. Maxima quidem 9 iunii 1862.

"XX. Ecclesiastica potestas suam auctoritatem exercere non debet absque civilis gubernii venia et assensu.

" Alloc. Meminit unusquisque 30 septembris 1861.

"XXI. Ecclesia non habet potestatem dogmaticæ definiendi, religionem Catholicae Ecclesiae esse unice veram religionem.

" Litt. Apost. Multiplices inter 10 iunii 1851.

"XXII. Obligatio, qua catholicæ magistri et scriptores omnino adstringuntur, coarctatur in iis tantum, quæ ab infallibili Ecclesiae judicio veluti fidei dogmata ab omnibus credenda proponuntur.

" Epist. ad Archiep. Frising. Tuas libenter 21 decembris 1863.
APPENDIX IX.

"XXIII. Romani Pontifices et Concilia oecumenica a limitibus suæ
potestatis recesserunt, jura Principum usurparunt, atque etiam in
rebus fidei et morum definiendis errarunt.
" Litt. Apost. Multiplices inter 10 iunii 1851.
" XXIV. Ecclesia vis inferendæ potestatem non habet, neque
potestatem ullam temporalem directam vel indirectam.
" XXV. Præter potestatem episcopatui inhærentem, alia
attributa temporalis potestas a civili imperio vel expresse vel tacite
concessa, revocanda propterea, cum libuerit, a civili imperio.
" XXVI. Ecclesia non habet nativum ac legitimum jus acquirendi
ac possidendi.
" Epist. en encycl. Incredibili 17 Septembris 1863.
" XXVII. Sacri Ecclesiae ministri Romanusque Pontifex ab omni
rerum temporali cura ac dominio sunt omnino excludendi.
" Alloc. Maxima quidem 9 iunii 1862.
" XXVIII. Episcopis sine gubernii veniam, fas non est vel ipsas
apostolicas litteras promulgare.
" XXIX. Gratissime Romano Pontifice concessae existimari
tamquam irritæ, nisi per gubernium fuerint imploratæ.
" XXX. Ecclesiæ et personarum ecclesiasticarum immunitas a jure
civili ortum habuit.
" Litt. Apost. Multiplices inter 10 iunii 1851.
" XXXI. Ecclesiasticum forum pro temporaliibus clericorum
causis sive civilibus sive criminalibus omnino de medio tollendum
est etiam inconsulta et reclamante Apostolica Sede.
" XXXII. Absque uUa naturæ juris et aequitatis violatione
potest abrogari personalis immunitas, qua clerici ab onere subeundæ
exercendæque militiæ eximuntur; hanc vero abrogationem pos-
tutam civili progressus, maxime in societate ad formam liberiors
regiminis constituata.
" Epist. ad Episc. Montisregal. Singularis nobisque 29
septembris 1864.
" XXXIII. Non pertinet unice ad ecclesiasticam jurisdictioinem
potestatem proprio ac nativo jure dirigere theologiarum rerum
doctrinam.
" Epist. ad Archiep. Frising. Tuas libenter 21 decembris
1863.
" XXXIV. Doctrina comparantium Romanum Pontificem Principi
libero et agenti in universa Ecclesia, doctrina est quæ medio avo
prævaluit.
XXXV. Nihil vetat, aliquenus Concilii generalis sententia aut universorum populatorum facto, summum Pontificatum ab Romano Episcopo atque Urbe ad alium episcopum aliamque civitatem transferri.


XXXVI. Nationalis Concilii definitio nullam aliam admittit disputationem, civilissime administratio rem ad hosce terminos exigere potest.


XXXVII. Institutae possunt nationales Ecclesiae ab auctoritate Romani Pontificis subductae planeque divise.

Litt. Apost. 22 Augusti 1851.

XXXVIII. Divisioni Ecclesiae in orientalem atque occidentalem nimia Romanorum Pontificum arbitria contulerunt.


§ VI.

Errores de societate civilis tum in se, tum in suis ad Ecclesiam relationibus spectata.

XXXIX. Reipublicae status, utpote omnium jurium origo et fons, jure quodam potest nullis circumscripto limitibus.

Litt. Apost. 22 Augusti 1851.

XL. Catholica Ecclesia doctrina humanae societatis bono et commodo adversatur.

Epist. encycl. Qui pluribus 9 Novembris 1846.

Litt. Apost. 20 Aprilis 1849.

XLI. Civili potestati vel ab infidelis imperante exercitae competet potestas indirecta negativa in sacra; eadem proinde competit nedum jus quod vocant exequatur, sed etiam jus appellacionis, quam nuncupant ab abusu.


XLII. In conflictu legum utriusque potestatis, jus civilis pra-


XLIII. Laica potestas auctoritatem habet rescindendi, declarandi ac faciendo irritas solemnes conventiones (vulgo Concordata) super usu jurium ad ecclesiasticam immunitatem pertinentium cum Sede Apostolica initas, sine hujus consenso, immo et ea reclamante.

Litt. Apost. In Consistoriali 1 Novembris 1850.


XLIV. Civilis auctoritas potest se immiscere rebus quae ad religionem, morum et regimen spirituale pertinent. Hinc potest de instructionibus judicare, quas Ecclesiae pastores ad conscientiarem normam pro suo munere edunt, quin etiam potest de divinorum
sacramentorum administratione et dispositionibus ad ea suscipienda necessariis decernere.

Alloc. In Consistoriali 1 novembris 1850.

XLV. Totum scholarum publicarum regimen, in quibus juven-
tus Christianæ alicujus reipublicæ instituitur, episcopalibus dum-
taxat seminariis aliqua ratione exceptis, potest ac debet attribui
auctoritati civili, et ita quidem attribui, ut nullum alii cuicumque
auctoritati recognoscatur jus immiscendi se in disciplina scholarum,
in regimine studiorum, in graduum collatione, in defectu aut
approbatione magistrorum.

Alloc. In Consistoriali 1 novembris 1850.

XLVI. Inmo in ipsis clericorum seminariis methodus studio-
um adhibenda civili auctoritati subjicitur.

Alloc. Nunquam fore 15 decembris 1856.

XLVII. Postulat optima civilis societatis ratio, ut populares
scholare, quæ patent omnibus cuiusque et populo classis pueris, ac
publica universim Instituta, que litteris severioribusque disciplinis
tradendis et educationi juvenitis curanda sunt destinata, exi-
mantur ab omni Ecclesiae auctoritate, moderatrice vi et ingerentia,
plenoque, civilis ac politicae auctoritatis arbitrio subjiciuntur, ad
imperantium placita et ad communis legis opiniones amissim.

Epist. ad Archiep. Friburg. Quum non sine 14 iulii 1864.

XLVIII. Catholicis viris probari potest ea juvenitis instituenda
ratio, quæ sit a catholica sive et ab Ecclesiae potestate sejuncta,
quæque rerum dumtaxat naturalium scientiam ac terræ socialis
vitæ fines tantum modo vel saltem primarium spectet.

Epist. ad Archiep. Friburg. Quum non sine 14 iulii 1864.

XLIX. Civilis auctoritas potest impedire quominus sacrorum
Antistites et fideles populi cum Romano Pontifice libere ac mutuo
communicat.

Alloc. Maxima quidem 9 iunii 1862.

L. Laica auctoritas habet per se jus praesentandi Episcopos, et
potest ab illis exigere ut inæquant dioecesium procurationem. ante-
quam ipsi canonicanam a S. Sede institutionem et apostolicas litteras
accipiant.

Alloc. Nunquam fore 15 decembris 1856.

LI. Immo laicum gubernium habet jus deponendi ab exercicio
pastoralis ministerii Episcopos, neque tenetur obedire Romano
Pontifici in ipsis quæ episcopatum et Episcoporum respiciunt insti-
tutionem.

Litt. Apost. Multipes inter 10 iunii 1851.

Alloc. Acerbissimum 27 septembris 1852.

LII. Gubernium potest suo jure immutare ætatem ab Ecclesiae
praescriptam pro religiosa tam mulierum quam virorum profes-
APPENDIX IX.

sione, omnibusque religiosis familis indicere, ut neminem sine suo
permissu ad solemnia vota nuncupanda admittant.

Alloc. Nunquam fore 15 decembris 1856.

LIII. Abrogandae sunt leges quae ad religiosarum familiarum
statum tutandum, earumque jura et officia pertinent; immo potest
civile gubernium iis omnibus auxilium prestare, qui a suscepto
religiosae vitae instituto deficere ac solemnia vota frangere velint;
pariterque potest religiosas easdem familias perinde ac collegiataes
Ecclesias et beneficia simplicia etiam juris patronatus peuitus
extinguere, illorumque bona et reditus civilis postestatis adminis-
trationi et arbitrio subjicere et vindicare.

Alloc. Nunquam fore 15 decembris 1856.

LIV. Reges et Principes non solum ab Ecclesiae jurisdictione
eximuntur, verum etiam in questionibus jurisdictiorum dirimendis
superiores sunt Ecclesiae.


LV. Ecclesia a Statu, Statusque ab Ecclesia sejungendus est.

Alloc. Aserbissimum 27 septembris 1852.

§ VII.

Errores de Ethica naturali et Christiana.

LVI. Morum leges divinae haud egent sanctione, minimeque
opus est ut humanae leges ad naturae jus conformatur aut oblivi-
gandi vim a Deo accipiant.

Alloc. Maxima quidem 9 iunii 1862.

LVII. Philosophicarum rerum morumque scientia, itemque
civiles leges possunt et debent a divina et ecclesiastica auctoritate
declinae.

Alloc. Maxima quidem 9 iunii 1862.

LVIII. Aliae vires non sunt agnoscenda nisi illae quae in
materia posita sunt, et omnis morum disciplina honestasque colo-
cari debet et cumulandis et augendis quovis modo divitiis ac in
voluptatis exemplis.

Alloc. Maxima quidem 9 iunii 1862.

Epist. encycl. Quanto conficiamur 10 augusti 1863.

LIX. Jes in materiali facto consistet, et omnia hominum officia
sunt nomen inane, et omnia humana facta juris vim habent.

Alloc. Maxima quidem 9 iunii 1862.

LX. Auctoritas nihil aliud est nisi numeri et materialium virium
summa.

Alloc. Maxima quidem 9 iunii 1862.

LXI. Fortunata facti injustitia nullum juris sanctitati detri-
mentum affert.

Alloc. Jamdudum cernimus 18 martii 1861.
“LXII. Proclamandum est et observandum principium quod vocat de non interventu.

“LXIII. Legitimis principibus obedientiam detectare, immo et rebellare licet.

“Epist. encycl. Qui pluribus 9 novembris 1846.

“Alloc. Quisque vestrum 4 octobris 1847.


“LXIV. Turn cujusque sanctissimi juramenti violatio, turn quoslibet scelestae flagittiosaeque actio sempternae legi repugnants, non solum haud est improbanda, verum etiam omnino licta, summisque laudibus egerenda, quando id pro patriae amore agatur.

“Alloc. Quibus quantisque 20 aprilis 1849.

“§ VIII.

“Errores de Matrimonio Christiano.

“LXV. Nulla ratione ferri potest, Christum evexisse matrimonium ad dignitatem sacramentum.


“LXVI. Matrimonii sacramentum non est nisi contractuum accessorium ab eoque separabile, ipsumque sacramentum in una tantum nuptiali benedictione situm est.


“LXVII. Jure naturae matrimonii vinculum non est indissolubile, et in variis casibus divorcium proprium dictum auctoritate civili sanciri potest.


“Alloc Akerbissum 27 septembris 1852.

“LXVIII. Ecclesia non habet potestatem impedimenta matrimonii dirimendia inducendi, sed ea potestas civili auctoritatibus competit, a qua impedimenta existentia tollenda sunt.


“LXIX. Ecclesia sequioribus sequens dirimentia impedimenta induere opus, non jure proprio, sed illo jure usa, quod a civili potestate mutuata erat.


“LXX. Tridentini canones qui anathematis censuram illis in-ferunt qui facultatem impedimenta dirimendia inducendi Ecclesiae negare audant, vel non sunt dogmatici vel de hac mutuata potestate intelligendi sunt.


“LXXI. Tridentini forma sub infirmitatis pena non obligat, ubi lex civilis alien formam praestitut, et velit ad nova formam interveniente matrimonium valere.

"LXXII. Bonifacius VIII. votum castitatis in ordinatione emissum nuptias nullas reddere primus asseruit.

"LXXIII. Vi contractus mere civilis potest inter Christianos constare veri nominis matrimonium; falsumque est, aut contractum matrimonii inter Christianos semper esse sacramentum, aut nullum esse contractum, si sacramento excludatur.

"LXXIV. Causae matrimoniales et sponsalia suapte natura ad forum civile pertinent.


"§ IX.

"Errores de civili Romani Pontificis Principatu.

"LXXV. De temporalis regni cum spirituali compatibilitate disputant inter se Christianae et catholicae Ecclesiae fili.

"LXXVI. Abrogatio civilis imperii, quo Apostolica Sede potitur, ad Ecclesiae libertatem felicitatemque vel maxime conducet.


"§ X.

"Errores qui ad Liberalismum hodiernum referuntur.

"LXXVII. Atestate hac nostra non amplius expedit religionem catholicam haber in tanquam unicum status religionem, ceteris qui-buscumque cultibus exclusis.


"LXXVIII. Hinc laudabiliter in quibusdam catholicis nominis
692 APPENDIX IX.

"regionibus lege cautum est, ut hominibus illuc immigrantibus
"liceat publicum proprii cujusque cultus exercitium habere.
" Alloc. Acerbissimum 27 septembris 1852.
" LXXIX. Enimvero falsum est, civilem cujusque cultus liber-
"tatem, itemque plenam potestatem omnibus attributam quaslibet
"opiniones cogitationesque palam publicque manifestandi, conduit
"ere ad populumores animosque facilius corrumpendos, ac in-
"differentismi pestem propagandam.
" LXXX. Romanus Pontifex potest ac debet cum progressu,
"cum liberalismo et cum recenti civiltate sese reconciliare et
"componere.

No. 6.

Circular of Italian Minister for Foreign Affairs to Italian
Diplomatic Representatives abroad.

Il Ministro degli Affari Esteri ai rappresentanti di S. M. all’ estero.

" Florence, 18 Octobre 1870.

" Monsieur,
" Les populations des provinces romaines, ayant acquis la liberté
"d’exprimer solennellement leur volonté, se sont prononcées à la
"presque unanimité pour l’annexion de Rome et de son territoire à
"la monarchie constitutionnelle de Victor-Emmanuel II et de ses
"descendants.
" Cette votation, faite avec toutes les garanties de sincérité et de
"publicité, est la dernière consécration de l’unité italienne. C’est
"au milieu des manifestations de joie de la nation entière que S. M.
"le Roi a accepté le plébiscite des Romains, et qu’il a pu déclarer que
"l’œuvre commencée par son illustre père, et poursuivie par lui-
"même avec tant de persévérance et de gloire, est enfin achevée.
" Pour la première fois, depuis bien des siècles, les Italiens re-
"trouvent dans Rome le centre traditionnel de leur nationalité.
"Rome est désormais réunie à l’Italie par le droit national qui,
"exprimé d’abord par le Parlement, a trouvé dans le vote des
"Romains sa sanction définitive. C’est là un grand fait dont les
"conséquences, nous sommes les premiers à le reconnaître, s'étendent
"bien au-delà des frontières de la péninsule, et contribueront effi-
"cacement au progrès de la société catholique.
" En allant à Rome, l’Italie y trouve une des plus grandes ques-
"tions des temps modernes. Il s’agit de mettre d’accord le sentiment
"national et le sentiment religieux, en sauvegardant l’indépendance
"et l’autorité spirituelle du Saint-Siège au milieu des libertés inhé-
"rentes à la société moderne.
" Ainsi que vous l’avez vu par la réponse du Roi à la députation
romaine, l'Italie sent toute la grandeur de la responsabilité qu'elle 
assume en déclarant que le pouvoir temporel du Saint-Père a 
cessé d'exister. Cette responsabilité, nous l'acceptons avec cou-
rage, car nous sommes sûrs d'apporter à la solution du problème 
un esprit impartial et rempli du respect le plus sincère pour les 
sentiments religieux des populations catholiques. 

"Appliquer l'idée du droit, dans son acception la plus large et la 
plus élevée, aux rapports de l'Église et de l'État, telle est la tâche 
que s'impose l'Italie."

"Le pouvoir temporel du Saint-Siège était le dernier débris des 
institutions du moyen-âge. À une époque où les idées de sou-
veraineté et de propriété n'étaient pas nettement séparées, où la 
force morale n'avait aucune sanction efficace dans l'opinion pu-
blique, la confusion des deux pouvoirs a pu quelquefois ne pas 
 être sans utilité. Mais de nos jours il n'est pas nécessaire de 
posséder un territoire et d'avoir des sujets pour exercer une grande 
autorité morale. Une souveraineté politique qui ne repose pas 
sur le consentement des populations, et qui ne pourrait pas se 
transformer selon les exigences sociales, ne peut plus exister. La 
contrainte en matière de foi, repoussée par tous les États modernes, 
trouvait dans le pouvoir temporel son dernier asile. Désormais, 
tout appel au glaive séculier doit être supprimé à Rome même, et 
"l'Église doit profiter à son tour de la liberté. Dégagée des em-
barras et des nécessités transitoires de la politique, l'autorité 
religieuse trouvera dans l'adhésion respectueuse des consciences sa 
véritable souveraineté.

"Notre premier devoir, en faisant de Rome la capitale de l'Italie, 
est donc de déclarer que le monde catholique ne sera pas menacé 
dans ses croyances par l'achèvement de notre unité. Et d'abord, 
la grande situation qui appartient personnellement au Saint-Père 
ne sera nullement amoindrie : son caractère de souverain, sa pré-
éminence sur les autres princes catholiques, les immunités et la 
liste civile qui lui appartiennent en cette qualité, lui seront am-
plement garantis ; ses palais et ses résidences auront le privilège 
de l'extraterritorialité.

"L'exercice de sa haute mission spirituelle lui sera assuré par un 
double ordre de garanties : par la libre et incessante communica-
tion avec les fidèles par les nonciatures qu'il continuera à avoir 
auprès des puissances ; par les représentants que les puissances 
continueront à accréditer auprès de lui ; enfin, et surtout par la 
separation de l'Église et de l'État que l'Italie a déjà proclamée, et 
que le gouvernement du Roi se propose d'appliquer sur son terri-
toire dès que le Parlement aura donné sa sanction aux projets des 
censeurs de la couronne."

"Pour rassurer les fidèles sur nos intentions, pour les convaincre 
qu'il nous serait impossible d'exercer une pression sur les décisions 
du Saint-Siège et de chercher à faire de la religion un instrument 
politique, rien ne nous paraît plus efficace que la liberté complète
"Apparences des villes. Le ministre va se rendre à Rome, dont les traditions sont si imposantes, et est la puissance du droit. Que le sentiment religieux trouve une expansion nouvelle dans une société à laquelle ne manque d'ailleurs aucune des garanties de la liberté politique, pour nous ce n'est pas un sujet de crainte, mais de satisfaction, car la religion et la liberté sont les plus puissants éléments de l'amélioration sociale.

"Nous avons le ferme espoir que le moment viendra où le Saint-Père appréciera les immenses avantages de la liberté que nous offrons à l'Église, et qu'il cesserà de regretter un pouvoir dont tous les avantages lui restent, dont il ne perd que les embarras et les dangereuses responsabilités. Vous pourrez, en attendant Monsieur, assurer le Gouvernement auprès duquel vous êtes accrédité que le Saint-Père, qui a eu la bonne inspiration de ne pas s'éloigner du Vatican, est entouré par les autorités royales et par les populations des égards les plus respectueux. Le jour où le Pape, cédant aux mouvements de son cœur, se rappellera que le drapeau qui flotte à présent à Rome est celui qu'il a banni dans les premiers jours de son pontificat, au milieu des acclamations enthousiastes de l'Europe; le jour où la conciliation entre l'Église et l'État sera proclamée au Vatican, le monde catholique reconnaîtra que l'Italie n'a pas fait une œuvre stérile de démolition en allant à Rome, et que le principe d'autorité sera dans la ville éternelle replacé sur la base large et solide de la liberté civile et religieuse.

"Agréez, etc., (Firm.) "Visconti-Venosta."


No. 7.

Il Ministro del Re a Bruxelles al Ministro degli Affari Esteri.

"Bruxelles, 8 Novembre 1870.

"Ricevuto l' 11.

"Monsieur le Ministre,

"Dans le premier entretien que j'ai eu, à mon retour à Bruxelles, avec le Ministre des Affaires Étrangères, j'ai pu me convaincre que les récentes circulaires de V. E. sur les affaires de Rome avaient produit sur son esprit un excellent effet. M. d'Anethan
m'a dit que la grande question dans cette affaire était que la liberté et l'indépendance absolue du Saint-Père fussent un fait éclatant et incontestable aux yeux du monde entier, et que, de plus, il serait vivement à désirer que les stérilités données par l'Italie à cette parfaite liberté d'action reçusses la sanction collective de toutes les puissances catholiques. J'ai répondu à M. d'Anethan que dans cet ordre d'idées le Gouvernement du Roi était disposé à aller aussi loin que possible, et que les communiquons qu'il avait spécialement chargé ses représentants à l'étranger de faire aux différents Gouvernements constituaient évidemment, vis-à-vis des puissances catholiques, un engagement moral.

"J'ai profité de cette occasion pour demander au Baron d'Anethan quelle serait l'attitude du Gouvernement dans les interpelations que ne pourrait manquer de lui adresser la majorité catholique de la Chambre relativement aux affaires romaines. M. d'Anethan ma répondu qu'il n'avait aucune espèce d'inquiétude à cet égard, et ne ferait que répéter les déclarations qu'il avait déjà formulées devant la Chambre. 'La Belgique,' m'a-t-il de nouveau dit, 'est un État neutre, et sa neutralité elle-même lui impose la stricte obligation de ne se mêler en aucune façon des questions et des différends qui peuvent surgir entre les autres États. Si l'Italie a une question territoriale à discuter avec le Saint-Siège, c'est là une affaire dans laquelle la Belgique n'a rien à voir, et se serait méconnaître les principes sur lesquels repose son existence que de se prononcer d'une manière ou d'une autre à ce sujet. Pour nous pousser à exprimer officiellement une opinion, l'on nous dit quelquefois que nous sommes un Gouvernement catholique, mais la Belgique est un pays où la liberté de tous les cultes et la séparation absolue de l'Église et de l'État sont inscrites dans la constitution comme principes fondamentaux. Personnellement nous pouvons avoir les convictions religieuses qui nous conviennent; mais, comme Gouvernement, la Belgique doit et veut rester neutre; quelles que soient les instances et les pressions qui puissent se produire, nous ne sortirons pas de là.'

Ce langage, que j'ai trouvé beaucoup plus accentué que par le passé, indique très-clairement que le Cabinet actuel est plus que jamais résolu à s'abriter, en actes comme en paroles, derrière la plus stricte neutralité.

"Agréez, etc.,

(Firm.) "C. De Barbal."

APPENDIX IX.

No. 8.

Spanish Minister of State at Madrid to Italian Ambassador.
Il Ministro di Stato di Spagna al Ministro del Re a Madrid.

"Madrid, 14 Novembre 1870"

"Excellentissimo Signore,
"Col maggiore interesse ho preso conoscenza della circolare colla quale il signor Visconti-Venosta informa i rappresentanti del Re all'estero che Sua Maestà ha accettato il plebiscito dei Romani i quali, quasi all'unanimità hanno votato per l'annessione di Roma e del suo territorio alla monarchia costituionale di Vittoria Emanuele e suoi discendenti.
"Il signor Ministro degli Affari Esteri di Sua Maestà espone in quel documento la nuova situazione creata alla Santa Sede poiché è venuto meno il potere temporale del Papa, e manifesta la fondata speranza che questo avvenimento non sia punto per nuocere all' esercizio della missione spirituale del Sommo Pontefice, il quale, avvenendo in Italia la riconciliazione dello Stato colla Chiesa, riconoscerà che l'annessione dei suoi domini alla monarchia del Re Vittorio Emanuele, non è stata opera sterile di distruzione e che il principio di autorità nella città eterna si rafforzerà nuovamente, cementato solidamente sulla base della libertà civile e religiosa.
"Il Governo di S. A. brama vivamente che giunga quel giorno in cui l'Italia, la quale, al prezzo di tanti sacrifici, ed attraverso tanti secoli, ha proseguito costantemente la laboriosa impresa della sua unificazione, già intravveduta ed accarezzata nelle profonde meditazioni del genio, e radicatisi infine in tutte le classi del popolo come meta delle aspirazioni nazionali, potrà congiungere alle antiche sue tradizioni di grandezza, simboleggiate da Roma capitale, quelle della sovranità spirituale cui sono avvenze a scorgervi le non scemarono sicuramente nel voderlo seduto sull' augusta cattedra di San Pietro senza che cinga sulla tiara la corona temporale.
"Così il papato vivrà di vita propria, senza che la religione sia turbata nella sua sfera pacifica e serena dalle esigenze politiche del diritto moderno, le quali non attaccano la sovranità spirituale del Pontefice, ma che, avversate di ostinata e temeraria resistenza, avrebbero poputo, nel giorno dell'inevitabile trionfo, travolgere nella stessa catastrofe l'autorità religiosa ed il dominio temporale dei Papi. Il Governo Italiano non poteva più a lungo sconoscere il desiderio delle popolazioni, senza esporsi a vedere coinvolta nella stessa avversione la monarchia costituionale. Esso ha dovuto provvedere nel tempo stesso al prestigio della Chiesa ed alla sua propria conservazione procedendo innanzi sulla via tracciati dalla pubblica opinione.
"Agli occhi della Spagna non poteva essere indifferente il passo
decisivo che l’ Italia ha fatto testé nel cammino della sua ricostruzione politica. Poiché le due nazioni sono unite dal vincolo della comunanza d’ origine, dall’ affinità di razza, lingua, costumi e religione, e sono costituite sotto identica forma di governo, e non hanno, fortunatamente, interessi opposti, ma sperano, invece, riunire quei molti che già le ravvicinano con nuovo legame che venga a stringere la loro fraterna amicizia, il Governo spagnuolo ha la certezza di essere fedele interprete dei sentimenti del paese nel congratularsi seco stesso, e felicitarne cordialmente quello di S. M. Vittorio Emanuele, per essere finalmente pervenuto a por-tare gloriosamente a termine l’ opera del l’ unità italiana.

In questa circostanza solenne il Governo Italiano si è affrettato a dichiarare che il mondo cattolico nulla ha da temere per le sue credenze religiose dalla nuova situazione in cui, d’ ora in poi, si troverà il pontificato. E, per rassicurarlo a questo riguardo, il signor Visconti-Venosta enunciava nella sua circolare le saggii e prudenti disposizioni che il Governo si propone fin d’ ora di adottare per rispetto alla persona del Santo Padre, al quale si useranno tutti i riguardi e si conserveranno tutte le immunità e prerogative inerenti all’ elevato suo carattere.

Degna di applaudo a tal riguardo è la prevenienza del Governo Italiano, il quale piglia l’ iniziativa spontanea di attuare le legittime suscettività che potrebbero eccitarsi nelle Potenze cattoliche, timorose forse di veder sparire, sotto i colpi della rivoluzione, il prestigio della più alta di tutte le istituzioni. La condotta che si tracciata il Governo del Re Vittorio Emanuele, sollecito, fin d’ ora, di conservare tutto ciò che sia degno di rispetto nelle tradizioni del Papato, rassicura in questo punto i più timorosi, ed il Governo di S. A. il Reggente non avrà per lui che una voce di approvazione se riesce a superare tutte le difficoltà che, nella effettuazione dei suoi propositi, gli si affaccieranno indubitamente, ed a serbare invulnerato, fra le rovine del trono dei Papi, il potere spirituale del Capo della nostra santa religione.

A questo risultato la Spagna piglia maggior interesse che qualunque altra delle Potenze cattoliche. La religione cattolica che è stata in Spagna fino ad oggi di diritto una delle basi della sua esistenza politica, e che, oggi ancora, dopo stabilita la libertà dei culti, è un fatto nella immensa maggioranza del popolo Spagnuolo, le fa considerare come cosa propria tutto ciò che ha tratto alla sorte del pontificato. Perciò, il Governo del quale ho l’ onore di far parte ha seguito con singolare attenzione l’ andamento degli ultimi casi, formando voti perché l’ Italia soddisfacesse alle giuste esigenze dell’ epoca in tutto quanto ha rapporto col diritto costitu-zionale moderno, desiderando in pari tempo che essa attendesse eziando, in mezzo a quella necessaria trasformazione, alla conservazione delle tradizioni che, sciolte da qualunque forma di governo esteriore, hanno profonde radici nella coscienza universale.
"Mi compiaccio di sperare che queste considerazioni, che il "Governo italiano ha avuto finora presenti nella questione romana, "continueranno ad ispirare la sua condotta in tutto ciò che a quella "si riferisca, e che, conoscendo, come dice assai opportunamente il "Signor Visconti-Venosta, l' immensa responsabilità che esso contra- "dichiarando cessato il potere temporale del Santo Padre, il Governo "Italiano applicherà alla soluzione di questo problema uno spirito "di imparzialità e di sincero rispetto verso i sentimenti religiosi "pelle Potenze cattoliche.

"Profitto, ecc. (Firm.) " SAGASTA."


---

THE STATUTE OF GUARANTEES—AS TO THE FUTURE STATUS OF THE POPE IN THE KINGDOM OF ITALY.


" Gazzetta Ufficiale del Regno d' Italia. 

" Firenze, Lunedì 15 Maggio.

" Il N. 214 (Serie seconda) della Raccolta ufficiale delle leggi e dei " decreti del Regno contiene la seguente legge:

" VITTORIO EMANUELE II,

" PER GRAZIA DI DEO E PER VOLONTÀ DELLA NAZIONE RE D' ITALIA.

" Il Senato e la Camera dei deputati hanno approvato,

" Noi abbiamo sanzionato e promulghiamo quanto segue:

" TITOLO I.

" Prerogative del Sommo Pontefice e della Santa Sede.

" Art. 1.—La persona del Sommo Pontefice è sacra ed invio- "labile.

" Art. 2.—L'attentato contro la persona del Sommo Pontefice e "la provocazione a commetterlo sono puniti colle stesse pene sta- "bilite per l'attentato e per la provocazione a commetterlo contro la "persona del Re.

" Le offese e le ingiurie pubbliche commesse direttamente contro "la persona del Pontefice con discorsi, con fatti, o coi mezzi indicati "nell' articolo 1 della legge sulla stampa, sono punite colle pene "stabilite all' articolo 19 della legge stessa.
I detti reati sono d'azione pubblica e di competenza della Corte d'Assisie.

La discussione sulle materie religiose è pienamente libera.

Art. 3.—Il Governo italiano rende al Sommo Pontefice nel territorio del Regno gli onori Sovrani, e gli mantiene le premiennenze d'onore riconosciutegli dai Sovrani cattolici.

Il Sommo Pontefice ha facoltà di tenere il consueto numero di guardie addette alla sua persona e alla custodia dei palazzi, senza pregiudizio degli obblighi e doveri risultanti per tali guardie dalle leggi vigenti del Regno.

Art. 4.—È conservata a favore della Santa Sede la dotazione dell'annua rendita di lire 3,225,000.

Con questa somma, pari a quella inscritta nel bilancio romano sotto il titolo: Sacri palazzi apostolici, Sacro collegio, Congregazioni ecclesiastiche Segreteria di Stato ed Ordine diplomatico all'estero, si intenderà provveduto al trattamento del Sommo Pontefice e ai vari bisogni ecclesiastici della Santa Sede, alla manutenzione ordinaria e straordinaria, e alla custodia dei palazzi apostolici e loro dipendenze; agli assegnamenti, giubilazioni e pensioni delle guardie, di cui nell'articolo precedente, e degli addetti alla Corte Pontificia, ed alle spese eventuali; non che alla manutenzione ordinaria e alla custodia degli annessi musei e biblioteca, e agli assegnamenti, stipendi e pensioni di quelli che sono a ciò impiegati.

La dotazione, di cui sopra, sarà inscritta nel Gran Libro del debito pubblico, in forma di rendita perpetua ed inalienabile nel nome della Santa Sede; e durante la vacanza della Sede si continuerà a pagarla per supplire a tutte le occorrenze proprie della Chiesa romana in questo intervallo.

Essa resterà essente da ogni specie di tassa od onere governativo, comunale o provinciale; e non potrà essere diminuita neanche nel caso che il Governo italiano risolvesse posteriormente di assumere a suo carico la spesa concernente i musei e la biblioteca.

Art. 5.—Il Sommo Pontefice, oltre la dotazione stabilita nell'articolo precedente, continua a godere dei palazzi apostolici Vaticano e Lateranense, con tutti gli edifizi, giardini e terreni annessi e dipendenti, non che della villa di Castel Gandolfo con tutte le sue attinenze e dipendenze.

I detti palazzi, villa ed annessi, come pure i musei, la biblioteca e le collezioni d'arte e d'archeologia ivi esistenti sono inalienabili, esenti da ogni tassa o peso e da espropriaione per causa di utilità pubblica.

Art. 6.—Durante la vacanza della Sede Pontificia, nessuna autorità giudiziaria o politica potrà per qualsiasi causa porre impedimento o limitazione alla libertà personale dei Cardinali.

Il Governo provvede a che le adunanze del Conclave e nei Concili ecumenici non siano turbate da alcuna esterna violenza.
APPENDIX IX.

"Art. 7.—Nessuno ufficiale della pubblica autorità od agente della forza pubblica può, per esercitare atti del proprio ufficio, introdursi nei palazzi e luoghi di abituale residenza o temporaria dimora del Sommo Pontefice, o nei quali si trovi radunato un Conclave o un Concilio ecumenico, se non autorizzato dal Sommo Pontefice, dal Conclave o dal Concilio.

"Art. 8.—È vietato di procedere a visite, perquisizioni o sequestri di carte, documenti, libri o registri negli uffizi e congegazioni pontificie, rivestiti di attribuzioni meramente spirituali.

"Art. 9.—Il Sommo Pontefice è pienamente libero di compiere tutte le funzioni del suo ministero spirituale, e di fare affiggere alle porte delle basiliche e chiese di Roma tutti gli atti del suddetto suo ministero.

"Art. 10.—Gli ecclesiastici che per ragione d’ufficio partecipano in Roma all’ emanazione degli atti del ministero spirituale della Santa Sede non sono soggetti per cagione di essi a nessuna molestia, investigazione o sindacato dell’ autorità pubblica.

"Ogni persona straniera investita di ufficio ecclesiastico in Roma gode delle guarentigie personali competenti ai cittadini italiani in virtù delle leggi del Regno.

"Art. 11.—Gli inviati dei Governi esteri presso Sua Santità godono nel Regno di tutte le prerogative ed immunità che spettano agli agenti diplomatici secondo il diritto internazionale.

"Alle offese contro di essi sono estese le sanzioni penali per le offese agli inviati delle potenze estere presso il Governo italiano.

"Agli inviati di Sua Santità presso i Governi esteri sono assicurate nel territorio del Regno le prerogative ed immunità di uso secondo lo stesso diritto nel recarsi al luogo di loro missione e nel ritornare.

"Art. 12.—Il Sommo Pontefice corrisponde liberamente coll’ Epi scopato e con tutto il mondo cattolico, senza veruna ingerenza del Governo italiano.

"A tal fine gli è data facoltà di stabilire nel Vaticano o in altra sua residenza uffizi di posta e di telegrafo serviti da impiegati di sua scelta.

"L’ uffizio postale pontificio potrà corrispondere direttamente in pacco chiuso cogli uffizi postali di cambio delle estere amministrazioni o rimettere le proprie corrispondenze agli uffizi italiani.

"In ambo i casi il trasporto dei disspacci o delle corrispondenze munite del bollo dell’ uffizia pontifico sarà essente da ogni tassa o spesa pel territorio italiano.

"I corrieri spediti in nome del Sommo Pontefice sono pareggiati nel Regno ai corrieri di Gabinetto dei Governi esteri.

"L’ uffizio telegrafico pontificio sarà collegato colla rete telegrafica del Regno a spese dello Stato.

"I telegrammi trasmessi dal detto uffizio con la qualifica autenticata di pontifici saranno ricevuti e spediti con le prerogative..."
APPENDIX IX.

"stabilite pei telegrammi di Stato e con esenzione di ogni tassa nel di ogni tassa nel Regno.
"Gli stessi vantaggi godranno i telegrammi del Sommo Pontefice, o firmati d' ordine suo, che, muniti del bollo della Santa Sede, verranno presentati a qualsiasi uffizio telegrafico del Regno.
"I telegrammi diretti al Sommo Pontefice saranno esenti dalle tasse messe a carico dei destinatari.
"Art. 18.—Nella città di Roma e nelle sei sedi suburbicarie i seminari, le accademie, i collegi e gli altri istituti cattolici fondati per la educazione e coltura degli ecclesiastici continueranno a dipendere unicamente dalla Santa Sede, senza alcuna ingerenza delle autorità scolastiche del Regno.

"TITOLO II.

"Relazioni dello Stato colla Chiesa.

"Art. 14.—È abolita ogni restrizione speciale allo esercizio del diritto di riunione dei membri del clero cattolico.
"Art. 15.—È fatta rinuncia dal Governo al diritto di legaiazia apostolica in Sicilia ed in tutto il Regno al diritto di nomina o proposta nella collazione dei benefici maggiori.
"I vescovi non saranno richiesti di prestare giuramento al Re.
"I benefici maggiori e minori non possono essere conferiti se non a cittadini del Regno, eccettoché nella città di Roma e nelle sedi suburbicarie.
"Nella collazione dei benefici di patronato Regio nulla è inno- vato.
"Art. 16.—Sono aboliti l' exequatur e placet Regio ed ogni altra forma di assenso governativo per la pubblicazione ed esecuzione degli atti delle autorità ecclesiastiche.
"Però fino a quando non sia altrimenti provveduto nella legge speciale di cui al-l'articolo 18 rimangono soggetti all'exequatur a placet Regio gli atti di esse autorità che riguardano la destina- zione dei beni ecclesiastici e la provvista dei benefici maggiori e minori, eccetto quelli della città di Roma e delle sedi suburbi- carie.
"Restano ferme le disposizioni delle leggi civili rispetto alla crea- zione e ai modi di esistenza degli istituti ecclesiastici ed aliena- zione dei loro beni.
"Art. 17.—In materia spirituale e disciplinare non è ammesso richiamo od appello contro gli atti delle autorità ecclesiastiche, nè è loro riconosciuta od accordata alcuna esecuzione coatta.
"La cognizione degli effetti giuridici, così di questi come d'ogni altro atto di esse autorità, appartiene alla giurisdizione civile.
"Però tali atti sono privi di effetto se contrari alle leggi dello
"Stato od all'ordine pubblico, o lesivi dei diritti dei privati, e vanno soggetti alle leggi penali, se costituiscono reato.

"Art. 18.—Con legge ulteriore sarà provveduto al riordinamento, alla conservazione ed alla amministrazione delle proprietà ecclesiastiche nel Regno.

"Art. 19.—In tutte le materie che formano oggetto della presente legge cessa di avere effetto qualunque disposizione ora vigente, in quanto sia contraria alla legge medesima.

"Ordiniamo che la presente, munita del sigillo dello Stato, sia inserita nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

"Data in Torino addì 13 maggio 1871.

"VITTORIO EMANUELE.

"G. LANZA.

"E. VISCONTI-VENOSTA.

"GIOVANNI DE' FALCO.

"QUINTINO SELLA.

"C. CORRENTI.

"C. RICOTTI.

"G. ACTON.

"CASTAGNOLA.

"G. GADDa."

No. 10.

ENCYCLIC ON THE GUARANTEE STATUTE, MAY 15, 1871.

"Sanctissimi Domini Nostri Pii Divina Providentia Papæ IX.

"Epistola Encyclìca ad omnes Patriarchas, Primates, Archiepiscopos, Episcopos, aliosque locorum ordinarios, gratiam et communionem cum apostolica, sede habentes.

"PIUS PP. IX.

"VENERABLES FRATRES,

"SALUTEM ET APOTOLICAM BENEDITIONEM.

"Ubi Nos arcano Dei consilio sub hostilem potestatem redacti tristem atque acerbam vicem huissur Urbis Nostre et oppressum armorum invasione civilem apostolice Sedis Principatum vidimus, iam tum datis ad Vos litteris die prima Novembris anno proxime superiori, Vobis ac per Vos toti orbi catholico declaravimus qui esset rerum Nostrarum et Urbis huissur status, quibus obnoxii essemus impiae et effrenis licentiae excessibus; et ex supremi officii Nostri ratione coram Deo et hominibus salva ac integra esse velle iura Apostolicae Sedis testati sumus, Vosque et omnes di-
Christianae primis fiducia virtus initia apostolicam pietas ferventibus. Quo "lectos Filios curis vestris creditos fideles ad divinam Maiestatem fervidis precibus placandam excitavimus. Ex eo tempore mala et calamitates quas prima illa luctuosa experimenta Nobis et huic "Urbi praenunciabant, nimium vere in apostolicam dignitatem et auctoritatem, in Religionis morumque sanctitatem, in dilectissimos subditos Nostros reipsa redundarunt. Quin etiam, Venerabiles "Fratres, conditionibus rerum quotidie ingrascentibus, dicere cogimur Sancti Bernardi verbis: initia malorum sunt hæc; gra- "viora timemus (d). Iniquitas enim viam suam tenere peragit et "consilia promovet, neque iam valde laborat ut velum obducat "operibus suis pessimis quæ latere non possunt, atque ultimas ex "concussitum iustitia, honestate, religione exuvias referre studet. "Has inter angustias, quæ dies Nostros amaritudine complent, "præsertim dum cogitamus quibus in dies periculos et insidiosi fides "et virtus populi Nostri sibiicitur, eximia merita vestra, Vene- "rabiles Fratres, et diletorum Nobis fidelium quos cura vestra "complectitur, sine gratissimo animi sensu recolare aut commo- "morare non possimus. In omni enim terrarum plaga exhorta- "tionibus Nostris admirabili studio respondentis Christifidelis "Vosque duces et exempla sequuti, ex instante illo die expugnate "huius Urbis assiduis ac ferventibus precibus insiterunt, et seu "publicis atque iteratis supplicationibus, seu sacris peregrinatio- "nibus susceptis, seu non intermisso ad Ecclesias concursu, et ad "sacramentorum participationem accessu, sine praecipuis aliis "Christianæ virtutis operibus, ad thronum divinae clementiae per- "severanter adire, sui numeris esse putarunt. Neque vero hæc "flagrantiæ deprecationum studia amplissimo apud Deum fructu "carere possunt. Multa immo ex iis iam profecta bona etiam alia, "qué in spe et fiducia expectamus, pollicentur. Videmus enim "firmitatem fidei, arduorum caritatis sese in dies latius explicantem, "cernimus eam sollicitudinem in Christi fideliæ animis pro huius "Sedes et suprema Pastoris laboribus et oppugnationibus excitatem "quam Deus solus ingerere potuit, ac tantam perspicimus unitatem "mentium et voluntatum, ut a primis Ecclesiae temporibus usque "ad hanc etatem nonquam splendidius ac verius dici potuerit quam "his diebus nostri, multitudinis creditum esse cor unum et ani- "mam unam (e). Quo in spectaculo virtutis silere non possimus "de amantissimæ filiæ Nostris huius alæ Urbis civibus, quorum "ex omni fastigio atque ordine amor erga Nos et pietas itemque "par certaminis firmitas luculenter eminuit atque eminet, neque "solum maioribus suis digna sed ænula animi magnitudo. Deo "igitur misericordiæ immortalium gloriæ et gratiam habemus pro "vobis omnibus, Venerabiles Fratres, et pro dilectis filiis Nostris "Christifidelibus, qui tanta in vobis, tanta in Ecclesia sua operatus

(d) Epist. 243. (e) Act. 4, 32.
APPENDIX IX.

"est et operatur, effectaque ut, superabundante malitia, superabundaret gratia fidei, caritatis et confessionis. 'Quae est ergo spe Nostra et gaudium Nostrum et corona glorise? Nonne vos ante Deum? Filius sapiens gloria est Patris. Beneficiat itaque vobis Deus et meminerit fideli servitii et ina compasionis et consolationis et honoris, quae sponte Filii eius in tempore malo et in diebus afflictionis suae exhibuistis et exhibetis.'

"Interea vero subalpinum Gubernium dum ex una parte Urbem proerat Orbi facere fabulum (g), ex altera ad fucum catholicis faciendum et ad eorum anxietates sedandas, in conflandis ac struendis futilibus quibusdam immunitatibus et privilegiis quae vulgo guarentigie dicuntur, elaboravit eo consilio ut hsec Nobis sint in locum civilis principatus, quo Nos, longa machinationum serie et armis parricidialiibus exuit. De hisce immunitatibus et cautionibus, Venerabiles Fratres, iam Nos iudicium Nostrum protulimus, earum absurditatem, versutiam ac luidibrium notantes in Litteris die 2 Martii pr. pr. datis ad Venerabilem Fratrem Nostrum Constantium Patrizi Sanctae Romanæ Ecclesie Cardinalem, sacri Collegii decanum ac Vicaria Nostra potestate in Urbe fungentem, quæ typis impressa protinus in lucem proierunt.

"Sed quoniam subalpini Gubernii est perpetuam turpemque simulationem cum impudenti contemptu adversus Pontificiam nostram dignitatem et auctoritatem coniungere, fatisque ostendit Nos nostras protestationes, expostulationes, censuras pro nihilo habere; hinc minime obstante iudicio de praedictis cautionibus a Nobis expresso, illarum discussionem et examen apud supremos Regni Ordines urgere et promovere non destitit, veluti de re seria agere tur. Qua in discussione cum veritas iudicii Nostrorum super illarum cautionem natura et indole, tum irritus hostium in velanda earumdem malitia et fraude conatus luculenter appatur. Certe, Venerabiles Fratres, incredibile est, tot errores catholicae fidelis ipsisque adeo iuris naturalis fundamentis palam repugnantes, et tot blasphemias, quot ea occasione prolatae sunt, preferri potuisse in media hac Italia, qua semper catholicae Religionis cultu et Apostolica Romani Pontificis Sede potissimum gloriate est et gloriatur; et revera, Deo Ecclesiam suam protegentem, omnino alii sunt sensus, quos reipsa fove longe maxima Italorum pars, quae novam hanc et inauditam sacrilegii formam Nobiscum ingenit ac deplorat et insignibus ac in dies maioribus suae pietatis argumentis officiisque Nos docuit uno se esse spiritu et sensu cum ceteris Orbis Fidelibus consociatam.

"Quapropter Nos iterum bodie ad Voces Nostrae convertimus, Venerabiles Fratres, et quamquam Fideles vobis commissive

(f) S. Bern. ep. 238 et 130. (g) S. Bern. ep. 243.
APPENDIX IX.

litteris suis sive gravissimis protestationum documentis aperte significaverint quam acerbe ferant eam quam preminur conditionem et quam longe absint ut iis eludantur fallacios quae cautio... quomque quod actus politico tamea subrogationem auctam eludantur illia ipsa esset, quod, Z Societatem sic Nobis Aposto... Gubernio quam iura, "nomiae perperam prerogativas immunitatea et necessariae...i ratio, neque alia quaequeque sint eius generis et quocumque modo sancta, quae specie...niendae Norstre sacrae potestatis et libertatis Nobis oblata fuerint in locum et subrogationem civilis eius Principatus, quo divina Providentia Sanctam Sedem Apostolicam muniram et auctam voluit, quemque Nobis confirmant tum legitimi inconcussique tituli, tum undecim et amplius seculorum possessio. Plane enim quicque manifesto pateat necesse est quod, ubi Romanus Pontifex alterius Principis ditioni subiectus foret, neque ipse revera amplius in politico ordine suprema potestate preditus esset, neque posset, sive persona eius sive actus Apostolici ministerii spectentur, sese eximere ab arbitrio illius, cuius subisset, imperantis, qui etiam vel hæretica vel Ecclesiae persecutor evadere posset aut in bello adversus alios Principes vel in bellis statu versari. Et sane, ipsa haec concessio cautionum, de quibus loquimur, nonne per se ipsa incultissimo documento est, Nobis quibus data divinitus auctoritus est leges ferendi ordinem moralen et religiosum spectantes, Nobis, qui naturalis ac divini iuris interpretis in toto orbe constituti summus, leges imponi, easque leges, quae ad regimen universæ Ecclesiae referuntur, et quorum conservationis ac exequionis non aliam est ius quam quod voluntates laicarum potestatum prescribit ac statuat? Quod autem ad habitudinem pertinet inter Ecclesiam et Societatem civilen, optime nostis, Venerabiles Fratres, prærogativas omnes et omnia auctoritatis iura ad regendam universam Ecclesiam necessaria Nos in persona Beatissimi Petri ab ipso Deo directe accepisse, immo prærogativas illas ac iura, seque ac ipsam Ecclesiae libertatem, sanguine Iesu Christi parta fuisse et quasita, atque ex hoc infinito divini sanguinis eius pretio esse restimanda. Nos itaque male VOL. II. Z Z
"admodum, quod absit, de divino Redemptoris Nostræ sanguine mere-

remur, si hæc iura Nostræ, quælìa præsertim nunc træd villent

adeo deminita ac turpata, mutuaremur a Principibus terre.

Filii enim, non domini Ecclesiæ sunt Christiani Principes; quibus
apposite inquiebat ingens illud sanctitatis et doctrinæ lumen
Anselmus Cantuariensis Archiepiscopus: 'ne putetis vobis Eccle-
siam Dei quasi dominò ad servienda esse datam, sed sicut advo-
cato et defensori esse commendatum; nihil magis diliget Deus in
hoc mundo quam libertatem Ecclesiæ suæ' (h). Atque incita-
menta eis addens alio loco scribebat: 'nunquam æstimetis
vestræ celsitudinis minuæ dignitatem, si Spònsæ Dei et Matris
vestrae Ecclesiæ amatis et defenditis libertatem, ne putetis vos
humiliari si eam exaltatis, ne credatis vos debilitari si eam robo-
ratis. Videte, circumspicite; exempla sunt in promptu, conside-
rate Principes qui illam impugnant et conculant, ad quid proficiunt,
ad quid deveniunt? satis patet, non eget dictu. Certe qui illum
glorificant, cum illa et in illa glorificabuntur' (i).

Iamvero ex iis quæ alias ad vos, Venerabiles Fratres, et modo a
Nobis exposita sunt, nemini profecto obscurum esse potest, inuriam
huc S. Sedi hisce acerbis temporibus inlatam in omnem Christianam
Rempublicam redundare. Ad omnam enim, uti aiebat S. Ber-
nardus, spectat Christianum inuriam Apostolorum, gloriosorum
scilicet Principum terræ; et cum pro Ecclesiis omnibus, uti
inquiebat predictus S. Anselmus, Romana laboret Ecclesia, quis-
quis ei sua auferit, non ipsi soli sed Ecclesiis omnibus sacrilegi
reus esse dignoscitur (k). Nec profecto ulli dubium esse potest
quin conservatio iurium huius Apostolicæ Sedis cum supremis
rationibus et utilitatis Ecclesiæ universæ et cum libertate Epis-
copalis ministerii vestri arctissime coniuncta sit et illigata.

Hæc omnia Nos, ut debemus, reputantes et cogitantes, iterum
confirmare constanterque profiteri cogimur, quod pluríes Vobis
Nobiscum unanimiter consentientibus declaravimus, scilicet civilem
S. Sedi Principatum Romano Pontifici fuisse singulari divinæ
Providentiae consilio datum illunque necessarium esse ut idem
Romanus Pontifex nulli unquam Principi aut civili Potestati
subjectus supremam universi Dominici gregis pascendi regendique
potestatem auctoritatemque ab ipso Christo Domino divinittus
acceptam per universam Ecclesiæ plenissima libertate exercere
ac maiori eiusdem Ecclesiæ bono utilitati et indigentiiæ consulere
possit. Id vos, Venerabiles Fratres, ac vobiscum Ædeles vobis
crediti probe intelligentes, merito omnes ob causam Religionis,
justitiae et tranquillitatis, quæ fundamenta sunt honorum omnium,
commoti estis, et digno spectaculo fidei, caritatis, constantiae,
virtutis illustrantes Ecclesiæ Dei ac in eius defensionem fideliter
intenti, novum et admirandum in annalibus eius exemplum in

(h) Ep. 8, 1. 4. (i) Ep. 12, 1. 4. (k) Ep. 42, 1. 3.
"futururum generationum memoriam propagatis. Quoniam vero
misericordiarum Deus istorum honorum est auctor, ad ipsum ele-
vantes oculos, corda et spem Nostrum Bum sine intermissione ob-
secramus, ut praecarios vestros et fidelium sensus, et communem
pietatem, dilectionem, zelum confirmet, roboret, augeat; iusque
item et commissos vigilantia vestrae populos enixe hortamur ut in
dies firmius et uberiis quo gravius dimicatio fervet, Nobiscum
clametis ad Dominum, quo ipse propitiationis suas dies maturare
dignetur. Efficit Deus ut Principes terrae quorum maxime inte-
rest, ne tale usurpationis quam Nos putamur exemplum in perni-
ciemi omnis potestatis et ordinis statuatur et vigeat, una omnes
animorum et voluntatum consensione iungantur, ac sublatis dis-
cordiis, sedatis rebellitionum perturbationibus, disiectis exitialibus
sectorum consiliis, conjunctam operam navent ut restituantur huic
S. Sedi sua iura et cum iis visibili Ecclesia Capiti sua plena
libertas, et civili societati optata tranquillitas. Nec minus, Vene-
rables Fratres, deprecatione vestra et Fidelium apud divinam
clementiam exposcete, ut iord impiorum, cecitate mentium
depulsam, ad ponitentiam convertat antequam veniat dies Domini
magnus et horribilis, aut reprimendo eorum nefanda consilia
ostendat quam insipientes et stulti sunt qui petram a Christo
fundatam evertere et divina privilegia violare conantur (l). In
his precibus spes Nostrae firmius in Deo consistant. 'Puta-
tisne avertere poterit Deus aurem a carissima Sponsa sua,
cum clamaverit stans adversus eos qui se angustiaverunt? Quo-
omo non recognoscet os de ossibus suis et carnem de carne sua,
isimo vero iam quodammodo spiritum de spiritu suo? Est quidem
nunc hora malitiae et potestas tenebrarum. Ceterum hora novis-
sima est et potestas cito transit. Del virtus et Dei sapientia
Christus Nobiscum est qui et in causa est. Confidite, ipse vicit
mundum' (m). Interim vocem aeterna veritatis magno animo et
certa fide sequamur quae dicit: pro injustia agonizare pro anima
tua, et usque ad mortem certa pro iustitia, et Deus expugnit pro
"te inimicos tuos (n)."

"Uberrima demum celestium gratiarum munera Vobis, Venera-
biles Fratres, cunctisque Clericis Laiciisque fidelibus cuiusque
Vestrum curae concorditis a Deo ex animo adprecanter, praecipue
"Nosstra erga Vos atque Ipsos intimeque caritatis pinguis Aposto-
licam Benedictionem Vobis iisdemque dilectis Filiiis peramanter
impertimus.

"Datum Roma apud S. Petrum die decimaquinta Maii anno
"Domini MDCCCLXXI.

"Pontificatus Nostri Anno vicesimoquinto.

"PIVS PP. IX."

(l) S. Greg. VII. ep. 6, 1. 3.
(m) S. Bern. ep. 126, n. 6, et 14.
(n) Eccl. 4, 33.
APPENDIX IX.

No. 11.

New Laws as to the Italian Clergy, June 6, 1871 (o).

"ATTI UFFICIALI.

"VITTORIO EMANUELE II, PER GRAZIA DI DIO E PER VOLONTÀ DELLA NAZIONE RE D' ITALIA.

"Il Senato e la Camera dei Deputati hanno approvato.

"Noi abbiamo sanzionato e promulghiamo quanto segue:

"Art. 1.—Sono abrogati gli articoli 268, 269 e 270 del Codice penale del 20 Novembre 1859, e surrogati i seguenti:

"Art. 268.—Il ministro di un culto, che nell’ esercizio del suo ministero, con discorso proferito o letto in pubblica riunione, o con scritti altrimenti pubblicati, abbia espressamente censurato, o con altro pubblico fatto abbia oltraggiato le istituzioni, le leggi dello Stato, un decreto reale, o qualunque altro atto della pubblica autorità, sarà punito col carcere fino a sei mesi e colla multa sino a lire mille.

"Art. 269.—Se il discorso, lo scritto o il fatto pubblico, di cui nell’ articolo precedente, sono diretti a provocare la disobbedienza alle leggi dello Stato o ad atti della pubblica autorità la pena sarà del carcere da sei mesi a due anni e della multa da mille a due mila lire. Ove la provocazione sia seguita da sedizione o rivolta, l’autore della provocazione, quando non sia complice, sarà punito col carcere da due a cinque anni e colla multa da due mila a tre mila lire.

"Art. 270.—Ogni altro fatto che costituisca reato secondo le leggi penali o secondo la legge della stampa, commesso dal ministro del culto nell’ esercizio del suo ministero, sarà punito con le pene quivi stabilite, non applicate nel minimo a norma delle leggi medesime.

"Art. 2.—È abrogato l’ articolo 3 del R. decreto 27 Novembre 1870, n. 6030, ecc.

"VITTORIO EMANUELE.

"G. DE PALCO."

No. 12.

Extract from "Journal Officiel de la République Française." (Dimanche, 23 Juillet 1871.)

DEBATE IN THE ASSEMBLÉE NATIONALE ON THE PRESENTATION OF PETITIONS RELATIVE TO THE PRESENT CONDITION OF THE POPE AT ROME.

"L’ordre du jour appelle le rapport de la commission des péditions.

(o) From the Gazzetta Ufficiale of June 6, 1871.
“La parole est à M. Pajot, rapporteur de la commission des pétitions.

M. Pajot, 1er rapporteur. — Messieurs, le cardinal archevêque de Rouen, l'évêque d'Alger, les évêques de Séez, de Coutances, de Bayeux et d'Évreux, l'archevêque de Cambrai et son suffragant, l'évêque d'Arras, adressent à l'Assemblée nationale deux pétitions sur la situation intolérable que le gouvernement italien a faite au souverain pontife et sur la nécessité d'y apporter un prompt remède.

Depuis, se sont joints à leurs collègues l'archevêque de Bourges, l'évêque d'Autun et un grand nombre de membres de l'épiscopat.

* * * * * * *

“La 4e commission des pétitions vous propose en conséquence de renvoyer les pétitions de NN. SS. les évêques, à M. le ministre des affaires étrangères. (Très-bien ! très-bien ! — Applaudissements sur plusieurs bancs.)

“La 4ème commission propose les mêmes conclusions pour les pétitions ci-après, savoir :

947. Du sieur de Chaulnes, au château de l'Émirillon, par Cléry (Loiret), demandant que la France intervienne pour la délivrance du saint-père et le rétablissement de son pouvoir temporel.

979. Des habitants du Morbihan demandant à l'Assemblée de faire entendre la voix de la France pour protester contre les violences dont le saint-père est la victime, et qui l'ont dépouillé du territoire qui lui était resté comme la sauvegarde de son indépendance spirituelle.

980. Des habitants du Finistère demandant à l'Assemblée de faire entendre la voix de la France pour protester contre les violences dont le saint-père est la victime, et qui l'ont dépouillé du territoire qui lui était resté comme la sauvegarde de son indépendance spirituelle.

1005. Des habitants des Côtes-du-Nord demandant que l'Assemblée nationale proteste contre les spoliations et la violation des droits dont Pie IX est la victime, et que les pétitionnaires regardent comme une sanglante injure pour la France, attaquée par là dans son honneur et dans sa foi.

1074. Des habitants de la commune de Pierrelatte (Drôme), qui adjurent l'Assemblée de faire respecter et réintégrer le pape dans la plénitude de son pouvoir temporel, afin qu'il puisse exercer librement et pleinement son ministère apostolique.

1182. Des habitants de Gex (Ain), demandant que la France, défenseur-né du saint-siège, ressaisisse son épée pour replacer le saint-père à la tête de ses États.

1372. Des habitants du département de la Mayenne, deman-
“dant à l'Assemblée de protester à la face du monde, au nom de
la France catholique, contre les spoliations dont le souverain
pontife se trouve victime.
“1381. Des habitants de Bayonne demandant à l'Assemblée de
protester hautement, au nom de la France catholique, contre
les spoliations et les violences dont le saint-père se trouve
victime.

"M. le président.—La parole est maintenant à M. de Tarteron
au nom de la 5e commission des pétitions.

"M. de Tarteron, 2e rapporteur.—Messieurs, votre 5e commis-
sion des pétitions a dû examiner et vous présenter aujourd'hui le
rapport d'un certain nombre de pétitions exactement semblables,
quant à leur objet, à celles qui viennent de vous être soumises,
asfin que vous puissiez par un seul vote manifester l'accueil que
vous croirez devoir leur faire.

"Ces pétitions sont au nombre de vingt-et-une. Huit émanent
des archevêques et des évêques des provinces ecclésiastiques
suites : Tours, Toulouse, Auch, Chambéry, Rennes, Sens,
Aix, Bourges, Bordeaux, une de l'évêque de Versailles. Les
autres sont signées presque exclusivement par des laïques. Elles
seront mentionnées par leur numéro à la suite du rapport.

"Toutes ces pétitions se fondent sur les mêmes motifs et tendent
aux mêmes conclusions. L'analyse de l'une d'elles devant les
faire connaître toutes, elles peuvent être présentées par un seul
rapport.

"Les évêques et les autres pétitionnaires signalent avec une pro-
fonde douleur la situation du souverain pontife et témoignent des
vives alarmes qu'elle leur inspire soit pour l'indépendance et
même la sûreté du monarque, soit pour la liberté des membres
de la société catholique.

* * * * * * * * * *

"M. le président.—La parole est à M. le président du conseil, chef
du pouvoir exécutif.

"M. Thiers, chef du pouvoir exécutif. (Mouvement général d'at-
tention. Profond silence)—Messieurs, je suis trop sincère pour
ne pas vous exprimer le regret que j'éprouve d'être obligé de
traiter aujourd'hui la grave question qui vient de vous être soumise
de nouveau ; non pas que j'aie à déshonorer aucune de mes opinions
passées ; vous allez voir que ce que j'ai pensé, je le pense encore
et le penserai toujours (Très-bien ! très-bien !) ; non pas que j'aie
à renier aucun de mes actes, à cacher aucune de mes intentions.
J'agis devant mon pays, j'agis devant des honnêtes gens, je puis
tout dire et à mon pays, et aux honnêtes gens qui m'entourent
(Très-bien !). Cependant, vous êtes tous trop expérimentés pour ne
pas comprendre qu'il est de grands intérêts que, dans certaines
circonstances, on sert bien plus par le silence que par la publicité
"(Assentiment à gauche), et cependant, messieurs, comme après tout
nous sommes obligés de faire, il faut que nous puissions tout dire ;
puisque l'on m'y contraint, je vais dire ce que fait le Gouverne-
ment.

"Peut-être, messieurs, si vous appréciez la nécessité, vous ne me
demanderez pas davantage ; si vous ne l'appréciez pas, même avec
une parfaite bonne foi, je le reconnaîs, vous éprouverez du dé-
plaisir ; mais quand vous connaîtrez toutes les raisons de mon
patriotisme, vous me pardonnerez le déplaisir que vous ressentirez,
parce que vous saurez que ce n'est pas à moi qu'il faut le blâmer.
(Mouvement.)

"Oui, messieurs, je puis déclarer que je n'ai rien à dissimuler de
mes opinions passées, car elles étaient sincères, et de terribles
résultats en ont proclamé bien haut, je crois, le modeste bon sens.

"J'ai souvent fait à mon pays, que j'aime, et que j'aime assez
pour pouvoir quelquefois lui infliger le blâme qui sort de ma
conviction et de ma conscience ; j'ai souvent fait à mon pays le
reproche d'être sous le joug de l'opinion du moment. Oui, disons-
"nous cette vérité : lorsqu'en France une opinion s'élève, presque
personne ne sait y résister. (C'est vrai !)

"Il faut vous le dire aujourd'hui, messieurs, car tous les jours
nous avons l'exemple, le funeste exemple de l'empire irrésistible
des idées du moment. C'est à cet aveugle empire que nous devons
l'abandon de la politique traditionnelle de la France, abandon puni
aujourd'hui par de cruels revers. (Mouvement.)

"Oui, j'ai vu un moment où cette vieille politique de l'équilibre
européen, qui était la conclusion de toute notre histoire, l'œuvre
de nos plus grands hommes, a été vouée au plus absurde ridicule.

(Très-bien ! très-bien !)

"On nous disait à propos de cette politique, qui était l'œuvre
d'Henri IV d'abord,—le plus profond et le plus attrayant des
hommes, qui était l'œuvre de Richelieu, le grand homme d'État
de la force ; de Mazarin, le grand homme d'État de la patience ;
de ces grands hommes qui avaient conduit la France à cette
admirable paix de Westphalie, on nous disait que cet équilibre,
rétabli en 1815 par les coups de la Providence qui semblait vouloir
nous dédommager de nous ôter la puissance du territoire, en nous
donnant celle de l'influence... (Très-bien ! très-bien !), que ce
grand et bel équilibre mettait la France, non pas en mesure de
dominer le monde, mais de le contenter, de le modérer par son
influence pacifique, mais irrésistible.

"Sur le continent, elle était placée entre la Prusse et l'Autriche ;
elle pouvait, en se portant vers l'une ou vers l'autre, maintenir la
paix du continent.

"Dans l'ensemble de l'Europe, elle était placée entre l'Angleterre
et la Russie : en se portant vers l'une ou vers l'autre, elle pouvait
arrêter des projets ambitieux.
"Telle était la situation, qui était l’œuvre du temps, du génie de nos grands gouvernants, de nos rois, de nos ministres, et que le spectacle de la puissance de la France, vaincue mais toujours redoutable, avait fait renaître dans le congrès de Vienne. (Très-bien! très-bien!)

"C’est cet équilibre que, par un moment de folie, nous avons voué au ridicule et que nous avons tous contribué à détruire (NOMBREUSES MARQUES D’ASSENTIMENT.)

"EH BIEN, MESSIEURS, J’AI PENSÉ ALORS QUE, CHANGER CET ÉTAT DE L’Europe pour céder à une doctrine pérille et funeste, celle des nationalités, que c’était préparer à la France des jours funestes et à jamais déplorables. (APPROBATION SUR UN GRAND NOMBRE DE BANCS.)

"Je ne fais aucun reproche à l’Italie de vouloir devenir une puissance une; je ne lui ai pas contesté le droit de le devenir par sa propre force, mais j’ai trouvé que, pour la France, c’était une faute insigne de vouloir faire de ces États séparés une puissance unique. (ASSENTIMENT.)

"Que les Italiens voulaient créer l’unité, c’était leur droit et nous n’avions pas de reproche à leur en faire; mais employer le sang de nos soldats et nos trésors à détruire en Europe cet équilibre, qui semblait fait pour nous, c’était insensé et aveugle tout à la fois. (VIVE APPROBATION ET APPLAUDISSEMENTS SUR UN GRAND NOMBRE DE BANCS.)

"Je n’ai jamais su incliner ma raison ni devant l’opinion régulière ni devant l’opinion de mes amis. Les hommes assis sur ces bancs désignent le côté gauche de l’Assemblée) et qui, avec moi, combattaient le despotisme impérial, je n’ai pas craint de me séparer d’eux et de leur dire: ‘La politique des nationalités sera un jour la perte de la grandeur française!’ (MARQUES D’APPROBATION À DROITE ET AU CENTRE.)

"Je n’étais pas d’avis de l’unité italienne,—je l’ai dit récemment à l’Italie elle-même,—non-seulement parce qu’on ne doit pas créer volontairement à côté de soi une grande puissance, mais parce que j’étais certain que l’unité italienne engendrerait l’unité allemande par l’exemple et par le secours matériel.

"Il y avait encore une autre raison, c’est que, pour moi, toucher à une question religieuse est la plus grande faute qu’un gouvernement puisse commettre. Il était impossible de créer l’unité italienne sans renverser le gouvernement temporel du saint-siège. EH BIEN, POUR MOI, AFFLIGER QUELQUE NOMBRE QUE CE SOIT DE CONSCIENCES RELIGIEUSES EST UNE FAUTE QU’UN GOUVERNEMENT N’A PAS LE DROIT DE COMMETTRE. (TRÈS-BIEN! TRÈS-BIEN!)

"Le plus haut degré de philosophie n’est pas de penser de telle ou telle façon, l’esprit humain est libre, heureusement; le plus haut degré de philosophie, c’est de respecter la conscience religieuse d’autrui, sous quelque forme qu’elle se présente, quelque
caractère qu'elle revête. (Bravo! bravo! — Applaudissements sur un grand nombre de bancs.)

Quant à moi, désoler les catholiques, désoler les protestants, est une faute égale : les protestants ne veulent pas qu'une seule communion chrétienne puisse dominer les autres : c'est leur croyance et c'est leur droit.

Les catholiques croient qu'une seule communion dans le christianisme doit dominer les autres pour maintenir ce grand et noble phénomène religieux, l'unité de croyances ; ils le croient et ils ont raison ; c'est leur droit, et tout gouvernement qui veut entreprendre sur la conscience d'une partie quelconque de la nation est un gouvernement impie aux yeux mêmes de la philosophie. (Très-bien! très-bien! — Applaudissements.)

J'ai dit au gouvernement impérial, sans esprit d'opposition, je ne fais d'opposition que sous l'impulsion d'une conviction profonde et ardente comme il est inévitable que je le fasse avec la nature que Dieu m'a donnée. Dans les derniers temps j'ai fait de l'opposition, non pas à la dynastie ; on pourrait se vanter aujourd'hui de lui en avoir fait ; il a commis assez de fautes et assez d'erreurs.

 Eh bien, je lui ai dit, vous le savez tous, et je ne le dépêche que pour prouver à ceux qui m'écouteront et au pays que mes opinions passées sont présentes à ma mémoire et à ma conscience et qu'à cette heure je n'en désavoue aucune, et je n'en désavoue aucune, et parce que je les crois justes, et qu'aujourd'hui, comprenant les intérêts de mon pays comme je les comprends, je n'oublie pas mes opinions passées, je les ai présentes ; j'ai donc dit au gouvernement impérial : ' Vous détruisez l'équilibre européen ; en faisant l'unité italienne, vous faites naître l'unité germanique. Vous allez toucher à une grande et redoutable question religieuse ; vous allez affligir les consciences, ébranler peut-être le catholicisme et de plus vous portez une atteinte à la vieille politique de la France, qui était de conserver soigneusement la clientèle catholique.'

Messieurs, nous voyons tous les jours une grande puissance, la Russie, faire entrer comme un des principaux moyens de sa politique la protection des Grecs ; vous savez tout ce que font les Anglais pour la protection du protestantisme ; depuis que l'Autriche n'était plus l'empire de Charles-Quint, c'était à nous, messieurs, qu'était échu le rôle de protecteurs du catholicisme. (Très-bien ! très-bien!) Le gouvernement impérial a aban- donné un des plus grands moyens d'influence et des plus efficaces de la politique française. (C'est vrai !)

Eh bien, messieurs, tout ce que j'ai dit alors a dû succomber devant l'idée du moment. L'idée du moment était comme une fatale ivresse montée à la tête du pouvoir ; en descendant des Alpes pour faire cette campagne glorieuse pour nos armes, déplo- rable pour notre politique, on a dit que la France avait toujours du sang à verser pour une idée. Eh bien, le fruit «a sang versé...
"pour cette idée, le voici : l'Italie est devenue une. Soyons justes, impartial, c'était sa destinée à elle, et elle faisait bien de la poursuivre, ce n'est pas à nous de lui en faire un reproche, je le répète, c'est à nous qu'il faut le faire. (C'est cela ! — Très-bien !)

"L'Italie a conquis l'unité et, non-seulement elle a apporté à l'Allemagne la puissance de l'exemple, elle a fait plus : elle a apporté le secours de son bras à la Prusse et, dans le moment où la Prusse hésitait à tenter cet acte si hardi d'agression contre l'Autriche, elle lui a offert de diviser les forces de l'Autriche en s'unissant à elle, et, après avoir enfanté l'unité germanique par son exemple, elle l'a élevée par son bras ; la Prusse a dû la victoire de Sadowa au génie de ses généraux, à la bravoure de ses soldats et aussi à la diversion qu'a faite l'Italie. (C'est vrai ! c'est vrai !)

"Il est donc vrai que l'unité italienne a fait l'unité germanique; et de plus elle a soullevé cette grande et redoutable question religieuse dont il lui était si facile de prévoir l'avenement. Oui, cette question s'est levée sur l'Europe et vous pouvez voir ce qu'elle produit déjà. Je le dis tous les jours aux Italiens, car c'est le meilleur moyen de diplomatie à employer auprès d'eux, je leur dis : Prenez-y garde, la conscience religieuse est une des plus formidables puissances de ce monde, et c'est l'honneur de l'humanité que ce ne soient pas seulement les intérêts matériels qui la menuent, mais que ce soient aussi des questions religieuses, des idées profondément désintéressées. (Bravos et applaudissements.)

"Eh bien, cette immense question s'est élevée ; le roi d'Italie est à Rome; il est dans la capitale de la péninsule, et Pie IX, le chef de cette grande Église catholique, est au Vatican ; il est entre le Vatican et Saint-Pierre, séjour sublime sans doute ; mais le pape est là entouré de la douleur des catholiques et du respect du monde entier ; enfin, il est enfermé dans cet asile et tous les catholiques se demandent avec raison, avec un droit incontestable, s'il y est libre. (Sensation.)

"Eh bien, messieurs, soyons francs ; ne nous impostez pas, sous des termes couverts, une tâche que notre loyauté ne nous permettrait pas d'accepter, que vous n'accepteriez pas vous-mêmes, une tâche qui, pour être ardemment religieuse, pourrait courir le danger d'être peu patriotique. (Très-bien ! très-bien !)

"Voyez notre situation. J'aurais bien aimé, messieurs, à n'être pas trop sincère, quoique, pour ce qui me regarde, ce soit un grand soulagement qu'une entière sincérité ; mais voyez bien notre situation. Cette Italie, je n'en suis pas l'auteur ; je suis avec vérité le dire au monde, de tous les hommes du temps, je suis celui qui aura le moins contribué à cette unité. (C'est vrai !)

"Mais enfin elle existe, elle est faite ; il y a une Italie, il y a un royaume d'Italie qui a pris place parmi les puissances considé-
APPENDIX IX.

"rables de l'Europe. Que voulez-vous que nous passions? Il faut "parler net; il ne faut pas nous imposer une diplomatie qui abou- "tirait à ce que vous désavoueriez publiquement, c'est-à-dire la "guerre. (Mouvement.)"

"Cette Italie, voyez le spectacle que donne l'Europe à son égard :
"la Russie, cette puissance qui a peu à craindre en ce monde,
"cette puissance, elle est flatteuse pour l'Italie depuis que la cour 
"de Rome, par un entraînement généreux, irriséché peut-être, a 
"touché à la question polonaise; la Russie, essentiellement conser-
"vatrice, a délaissé Rome; elle est parfaitement courteuse avec 
"l'Italie; l'Angleterre l'a toujours été; elle n'a pas été fâchée— 
"ce n'est pas un reproche que je lui adresse, — elle n'a pas été 
"fâchée de voir s'élever dans la Méditerranée une marine qui pour-
"rait par des raisons de voisinage être, non pas la rivale, mais l'en-
"nemie de la nôtre.

"L'Autriche, certes, l'Autriche est une puissance éminemment 
"catholique, mais elle a réfléchi à sa situation, et l'homme d'État 
"sage et habile qui la gouverne s'est dit que, quoique la grandeur 
"italienne se soit faite des dépouilles de l'Autriche, la sagesse était 
de se rapprocher d'elle; le cabinet de Vienne a compris que les 
"provinces italiennes n'avaient jamais été pour l'empire d'Autriche 
"qu'un fardeau qui lui coûtait plus qu'il ne lui rapportait; et avec 
"une sagesse qui, pour ma part, je reconnais et que je proclame 
hautement, il s'est dit : 'Puisque nous ne devons pas ambitionner 
de retourner en Italie, d'y reprendre ce que nous y avons perdu, 
il faut vivre bien avec l'Italie.' Et la Prusse, qui n'est pas vani-
"teuse, mais victorieuse, la Prusse cherche à s'ouvrir des passages 
dans les Alpes pour se rapprocher elle aussi de l'Italie. L'Espagne 
'a pris un roi de sa main.

"Voilà donc toutes les puissances protestantes, schismatiques, 
catholiques même, qui vivent dans les meilleurs termes avec l'Italie, 
et les motifs de cette bonne harmonie vous les devinez tous, vous 
devinez ceux de l'Autriche, vous devinez ceux de la Prusse: il 
n'est que faire d'y insister.

" Eh bien, que nous demanderiez-vous? Mettez-vous à la place 
d'un homme qui pense ce que j'ai pensé, ce que je pense encore, 
qui regarde comme une faute du gouvernement passé d'avoir 
changé et bouleversé la face de l'Europe, d'un homme qui regarde 
come un malheur d'affliger les catholiques de France, lesquels, 
après tout, sont 36 millions sur 37, et représentent le grand 
culte national. Oui, messieurs, mettez-vous à la place de l'homme 
qui pense tout ce que je pense sur ce sujet et à qui vous avez 
donné votre confiance. Et, interrogez-vous: quand toutes les 
puissances entretiennent de bons rapports avec l'Italie, que voulez-
vous que je fasse? Je m'adresse à vous tous, je vous pose cette 
question : vous catholiques les plus fervents, que je respecte pro-
fondément, car je suis heureux de trouver dans l'état moral du
"monde des hommes qui croient sincèrement et profondément...

"(Très-bien ! très-bien! — Applaudissements.)

"Je m'adresse à vous, et vous mettant à ma place dans ces lieux où je vis de soucis, je vous interroge à mon tour: que ferez-vous ? Vous me dites de ne pas accepter cette doctrine avilissante du fait accompli! Comme vous, ma conscience se révolte contre cette doctrine du fait accompli; mais lorsque toute l'Europe, les yeux sur l'avenir, compte avec une des grandes puissances, que le malheureux aveuglement du gouvernement déchu a créée, lorsque tout le monde compte avec elle, vous voulez que, seul, je prepare contre elle des rapports qui pourraient compromettre l'avenir.

"Eh bien, messieurs, non ; je ne puis pas en prendre l'engagement.

"Certainement vous ne me demandez pas la guerre, mais vous me conseillez une diplomatie dont le résultat serait de tenir en défiance, en éveil une puissance qui, dans l'avenir, peut jouer un rôle considérable ; oh! ne le demandez à ma prudence ni à mon patriarchisme! Vous avez autre chose à me demander, et je vous le dirai tout à l'heure ; mais compatissez, j'ose employer ce mot, avec les nécessités de ma situation : abstenez-vous de me demander une politique qui ne serait pas conséquente, si je voulais la pousser jusqu'au bout. (Très-bien! très-bien!)

"Que l'on ne croie pas, comme on le dit imprudemment en France, méchamment hors de France, que dans tout cela il entre des pensées de guerre prochaine, ou future ; non, messieurs, je le dis pour que cela soit entendu partout. Oui, la politique du Gouvernement auquel vous avez accordé votre confiance, qui ne veut la conserver qu'autant que ses actes la lui mériteront, pas un jour, pas une heure de plus, la politique de ce gouvernement, c'est la paix. (Très-bien! très-bien!)

"Ah! sans doute on nous verra, mettant à profit les leçons du malheur, emprunter à nos vainqueurs ce qu'ils peuvent avoir de bon,—non pas autant qu'on le voudrait dans certaines écoles,—mais nous saurons emprunter à nos voisins, partout où il le faudra, des leçons utiles.

"On nous verra—et je le dis bien haut—appliquer tous nos soins à réorganiser l'armée française, et tâcher de réunir en elle, à ces qualités admirables qui n'ont pas fléchi, l'application, l'étude et la discipline. On nous verra essayer de suppléer ce qui lui manque sous le rapport du matériel; on nous verra, zélés et confiants, accomplir la tâche de refaire la véritable armée française. (Très-bien! très-bien!)

"C'est là notre droit de grande nation qui veut conserver sa grandeur; ce n'est pas la politique astucieuse de ceux qui vou-draient, au premier prétexte, recommencer une guerre intempestive.

"Non! non! (Vives et nombreuses marques d'approbation.)

"Nous ne voulons pas rouvrir le champ des combats, mais nous voulons rendre la France digne du rôle qu'elle a toujours rempli
"appelé dans le monde, qu’elle est capable d’y remplir; car, si elle a fait
des pertes, je le déclare en toute sincérité, sans arrogance, sans
vanité, avec la plus sérieuse conviction, le fond de la grandeur de la France reste intact. La France a encore tout ce qu’il faut
pour être toujours la France! (Bravos et applaudissements.)
"Si nous suivons une politique de prévoyance, ce n’est pas pour
cela une politique de guerre. Et quand je pense, et quand je
vous fais penser avec moi à toutes les éventualités de la politique,
ce n’est pas que je chercho là dedans des chances de guerre, ni que
je veuille vous y pousser; c’est parce qu’il faut que vous vous
mettiez comme nous, comme votre Gouvernement, en présence de
toutes les éventualités possibles. Eh bien, aujourd’hui, entretenir
de mauvais rapports avec une puissance voisine qui pourra avoir
sur l’avenir une influence décisive, ce serait une politique mal-
habile; il ne suffit pas, pour entretenir la grandeur d’un pays, de
réorganiser son armée; il faut avoir une politique sensée et qui se
procure, partout où elle pourrait en avoir besoin, des appuis qui ne
lui manquent pas.
"Voilà pour mon devoir de citoyen.
"Maintenant, voici nos devoirs envers les catholiques, et quand
je dis envers les catholiques, je dis envers la plus grande partie, la
presque totalité de la nation.
"Eh bien, oui, nous avons un appui à donner au chef de ce grand
culte, le plus noble que les hommes aient professé; oui, il reste des
devoirs à remplir envers lui, et nous en avons de plus d’un genre.
Tous nos respects, nous les prodiguons à son siège, à ses malheurs,
à ses vertus. Il y a quelques jours, Pie IX a présenté ce grand
phénomène historique du seul pape dont le pontificat ait dépassé
en durée celui du premier pontife.
"Toute l’Europe la félicité, et j’ai saisi cette occasion pour lui
rendre hommage. La France n’a pas été en arrière; et, en votre
nom, je lui ai témoigné nos respects, notre gratitude pour sa bien-
veillance, pour cette affection dont on parlait tout à l’heure avec
vérité; car, dans le moment où nous recevions peu de témoignages
—ce serait une ingratitude de dire aucun—Pie IX a, dans sa
détresse, trouvé le denier de Saint-Pierre pour secourir nos blessés.
(Aclamations et applaudissements à droite.) Dans sa faiblesse
matérielle, il a du moins élevé la voix pour demander la paix.
Je lui ai exprimé, avec un profond respect, les sentiments de la
France; mais je n’ai pas écrit la lettre étrange qu’on m’a prêtée.
(Marques nombreuses d’assentiment.)
"Je veux, messieurs, vous faire connaître les détails de nos rela-
tions, pour que vous puissiez juger si le Gouvernement s’est
conduit d’une manière conforme à vos sentiments. (Parlez!
parlez!)
"Non-seulement je n’ai pas écrit au pape une telle lettre, mais je
ne me crois pas même quand je vous représente dans une question
si grave, je ne me crois pas le droit de donner un conseil au chef
de l’Église catholique. Aucun souverain en Europe, aucun gou-
vernement représentant pour le moment la souveraineté nationale,
ne doit élever la voix pour donner un conseil sur un sujet de cet
ordre.
Toutefois si je me permettais, non pas de donner un conseil,
mais d’exprimer le sentiment de la France, je dirais : Si ce pri-
sonnier, comme on l’a qualifié, devenait un exilé, ôh! je me bor-
nerais à lui déclarer à la face du monde : La France vous sera
toujours ouverte! (Très-bien!)
Mais Dieu me garde de lui insinuer, à quelque degré que ce
soit, un conseil! Ce serait manquer de respect; et je n’en man-
querai jamais, à cette puissance si vénérable. Je lui dirais seule-
ment : Ménagez la paix des âmes, car nous avons besoin de la
paix, de la paix religieuse, comme de la paix politique.
Ainsi nous adoptons et nous pratiquons tous les jours la poli-
tique la plus respectueuse et la plus conciliante : nous avons à nous
entendre sur des choix d’une grande importance, et nous mettrons
toujours un soin extrême à respecter toutes les convenances dans
nos choix, à n’en faire aucun qui puisse blesser une autorité qu’il
faut d’autant plus respecter qu’elle est moins heureuse et moins
puissante aujourd’hui. (Très-bien! très-bien!)
Mais ce n’est pas tout, il y a aussi, messieurs, à maintenir l’indé-
pendance religieuse du chef du catholicisme; oui, en cela il y a
un grand devoir à remplir, un devoir supérieur que nous ne
négligerons point.
Nous sommes assez heureux pour être liés avec l’Église par un
traité, le plus sage que les puissances catholiques aient jamais
conclu avec le saint-siège : je veux parler du Concordat.
Ce traité, il existe, il nous lie : il faut savoir en être heureux,
car toutes les puissances qui n’ont pas un traité semblable ont
tous les jours avec la cour de Rome des difficultés presque in-
solubles; les nôtres, au contraire, sont presque résolus d’avance
par ce traité du Concordat.
Vous le savez, le Concordat a établi que, lorsqu’il y a des pré-
lats à nommer, le souverain territorial, quel qu’il soit, depuis le
souverain dynastique et héréditaire jusqu’au dépositaire passager
de la souveraineté, a le droit de désigner les citoyens français qui
joignent aux vertus de l’honnête homme et aux vertus du prêtre
les qualités de l’administrateur religieux. Le Gouvernement ne
présente pas,—il est utile que je le dise hautement aujourd’hui,
—le Gouvernement ne présente pas, il nomme les évêques et les
archevêques. Mais, d’après le traité qui nous oblige, lorsque
nous avons fait le choix de ce bon citoyen, de l’habile adminis-
trateur, du bon prêtre, l’Église prononce et déclare que le candidat
que nous avons nommé, que nous avons fait évêque, réunit les
qualités d’orthodoxie, les vertus chrétiennes que l’Église seule
"peut admettre dans son vaste gouvernement. Les deux autorités "concourent donc; de là, messieurs, il résulte la nécessité pour "nous, non-seulement la nécessité, mais le droit de veiller avec une "défiance jalouse à l'indépendance du chef religieux dont nous "acceptons à ce degré le concours dans le gouvernement moral de "la France.

"Le Concordat est l'œuvre du grand homme qui a versé sur nous "tant de gloire et tant de malheurs; mais il est aussi l'œuvre morale "de Bossuet. Je le répète, ce traité, en réglant ainsi la nomination "des prélats, nous crée le droit et le devoir de veiller avec un soin "scrupuleux, avec un soin défiant, à l'indépendance du prince reli-"gieux avec lequel nous concourrons à une œuvre aussi délicate et "aussi difficile.

"Aussi, messieurs, nous n'avons cessé de demander que cette "indépendance fût garantie. On nous l'a promis; on nous le "promet tous les jours; mais l'expérience seule peut décider si "cette indépendance est réelle, ou si elle n'est qu'un mot, et si "elle deviendra un fait auquel l'Europe catholique puisse avoir "confiance.

"Messieurs, comme dans une œuvre aussi difficile, aussi délicate, "être seul n'est pas la meilleure des positions, nous nous unirons à "toutes les nations catholiques pour que cette indépendance soit "défendue non pas seulement par la France,—je parle de l'indé-"pendance religieuse,—mais par la catholicité tout entière. (Très-
"bien !)

"Fiez-vous-en donc à notre patriotisme et au respect que nous "devons au grand culte national. Nous tâcherons de remplir, 
"comme je viens de vous le dire, le double devoir qui nous est "imposé.

"En deux mots, je résume cette courte allocution que je tâche 
"d'abréger autant que je puis,—car à chaque instant, sans le "vouloir, avec la plus parfaite intention, on peut commettre une "faute, j'abrége cette allocution et je la résume en deux mots.

"Une grande puissance s'est élevée en Europe:—ce n'est pas ma "faute, ce n'est pas la vôtre—elle existe. Mon devoir de Français, "de citoyen, de représentant du Gouvernement français, est d'en-
tretenir de bons rapports avec elle et de ne soulever aucune "question qui pourrait les altérer. Mais nous avons de grands "intérêts religieux à sauvegarder: ces grands intérêts, je crois les "connaître, je crois les comprendre, je les défendrai, eux aussi, dans "la mesure des ressources que la situation me fournira. Je ne "vous promets pas de traverser heureusement, comme tous vous le "souhaitez, toutes les difficultés de cette situation; je vous pro-
mets de faire de mon mieux; je vous promets d'apporter, dans "ces relations, ce qu'y doit apporter un gouvernement de raison; "nous n'avons pas la prétention d'être autre chose. Issus de la "nécessité qui nous domine dans le moment, produit modeste mais
APPENDIX IX.

"dévoué de cette nécessité, nous ne pouvons nous vanter que d'une chose, c'est, je le répète, d'être un gouvernement de raison, et nous tâchons de nous conuer sous cette inspiration qui, je le crois, est celle que les gouvernements dans le monde entier devraient toujours prendre pour leur guide et leur directrice. (Bravos et longs applaudissements.)

"M. le président.—La parole est à M. l'évêque d'Orléans.

"Mgr. Dupanloup.—Messieurs, je suis heureux de monter à cette tribune pour rendre hommage à M. le président du conseil. Oui, sans le suivre dans toutes les hautes considérations politiques où il s'est engagé, je suis heureux de le remercier de tant de bonnes paroles qu'il vient de prononcer en faveur d'une cause qui depuis longtemps m'est chère. (Très-bien! très-bien!)

"J'en suis heureux et ému, car, à vingt années de distance, c'est la même voix que j'entendais dans une autre enceinte, sous une autre république, mais toujours pour cette même cause. Et cette rare fidélité, malgré les difficultés manifestes de l'heure présente et les craintes de l'avenir, lui vaut toute ma reconnaissance. (Très-bien! très-bien!—Applaudissements à droite.)

"A l'époque dont je rappelle la mémoire, M. Thiers parlait seul, et plusieurs de ceux qui l'assistant aujourd'hui ne partageaient pas ses pensées sur cette grave question. Pourquoi me serait-il défendu de croire que le désordre des temps et nos malheurs nous ont tous plus ou moins éclairés et rapprochés . . . . (Très-bien!), et que je trouverai dans toute cette Assemblée sans exception, pour la cause de la religion et de la société, enfin mieux comprise, le silence des passions et le respect? . . . (Vive adhésion.)

"Du reste, je ne vous entretiendrai pas longtemps, messieurs; mais si je ne vous parlais un moment en faveur de la pétition des évêques mes collègues, pour l'indépendance du siège apostolique, je me manquerai à moi-même et à une cause qui a tenu et a dû tenir une grande place dans ma vie, et dont la justice est telle, que rien, jamais, jusqu'à mon dernier soupir, ne saurait pour elle refroidir mon âme. (Nouveaux applaudissements à droite.)

"Et si je ne m'adressais à vous, je manquerai aussi à ce qui a été, dans ma longue carrière de lutte, la règle-constante de ma conduite. Même aux jours les plus difficiles et dans les causes les plus désespérées, j'ai tant estimé mon pays que toujours je me suis adressé à lui avec confiance (Très-bien!), que toujours j'ai fait appel à l'opinion publique partout où ma faible voix pouvait porter, mais jamais à la violence, ni à l'injure, ni à la faveur. (Très-bien! très-bien!—Bravos à droite.)

"Je viens donc, messieurs, m'associer aux pétitions de mes vénérés collègues, dans les termes mêmes dont ils se sont servis et dans la mesure qu'indiquait M. le président du conseil. . . . (Vive approbation et applaudissements sur un grand nombre de bancs.) Et je viens, dans cette mesure, saisir l'Assemblée, la
"souveraineté nationale, la conscience publique, l’honneur français ". . . (Mouvement à droite), de la cause la plus sacrée, la plus 
juste et la plus haute qui fut jamais, et aussi la plus délaissée. 
(Asseminiennent et applaudissements à droite.) 
"Messieurs, vous n’attendez pas de moi un long discours; les 
longs discours vous conviennent peu, et j’ai moins que personne 
le droit d’en faire ici. Mais, après les paroles que nous venons 
d’entendre, il n’y a qu’un orateur digne d’être écouté, c’est 
l’histoire, l’histoire dont M. Thiers a écrit les premières phases et 
dont les derniers et formidables mouvements, depuis une année, 
dominent toute voix humaine. (Sensation.—C’est vrai! c’est 
VRAI!) 
"Le cours rapide des temps nous ramène précisément, en ce 
mois, à ces jours de lamentable souvenir, où un ministre,—que de 
loin, il ne permette de lui redire,—où un ministre, au cœur 
trop léger, serviteur d’un maître à trop légère conscience aussi 
. . . (Léger mouvement.—Très-bien! très bien!), au même 
moment et d’une même main, a provoqué l’Allemagne et aban-
donné Rome! (Oui! oui!—Applaudissements.) 
" Dix années auparavant, la souveraineté temporelle du pape 
avait été tout d’abord ébranlée par nos victoires mêmes; puis 
bientôt le pape fut dépouillé par nos complicités et nos fai-
blesses. . . .

"Un membre à droite.—C’est cela!
"Mgr. Dupanloup. . . . Et enfin, il a été achevé par nos dés-
sastres . . . (C’est vrai!—Très-bien! très-bien!) dont l’ingrate 
Italie a si courageusement épié et saisi l’heure pour se jeter 
bravement sur sa proie. (Vives marques d’adhésion à droite.) 
"Et, il y a peu de jours, nous avons couru le danger,—je rends 
grâce à M. le président du conseil de nous avoir épargné ce spec-
tacle,—nous avons couru le danger de voir nos deux ambassadeurs, 
en face l’un de l’autre, se regardant tristement d’une rive du 
Tibre à l’autre, l’un au Vatican, près de l’Auguste vieillard spolié 
et captif, l’autre au Quirinal, près du roi galant-homme . . . 
(Mouvement), et représentant ainsi non plus la France, mais la 
politique à double face de son ancien gouvernement. (Très-bien! 
très-bien !)

"Et c’est ainsi, messieurs, que la souveraineté pontificale ayant 
eté la première victime des fautes et des désastres de la France 
impériale, il est simple, il est juste que les évêques français en 
appellent à la France, mieux inspirée, des douleurs de l’Église. 
"C’est une démarche naturelle, et qui nous est glorieuse aussi, 
car, de longue date, c’est l’habitude, en Europe, quand la justice 
souffre trop quelque part, qu’on se tourne vers la France. (Sen-
sation marquée.—Très-bien! très-bien!)

"Et ne vous plaignez pas, s’il est encore quelques coeurs, ici-
bas, en qui cette confiance survit à vos malheurs. . . . (Applaus-
issements.)

Quand la France a souffert on s'est peu tourné vers elle.

Malgré un voyage célèbre et des efforts dont, quoiqu'il arrive,
on n'oubliera jamais le patriotique dévouement . . . (Nouveaux
applaudissements), tous ces grands coeurs de souverains furent
alors de glace . . ., sauf le Pape, comme vous le disait affectueuse-
ment et respectueusement M. le chef du pouvoir exécutif, il n'y
a qu'un moment. Dans sa détresse, il a trouvé des secours gé-
néreux pour nos blessés, et, dans son âme, des sympathies toujours
fidèles pour notre malheureux pays. Et si la voix de sa faiblesse
n'a pas été entendue, il l'a du moins élevée, pour empêcher qu'on
ne viole indignement le territoire de notre patrie. (Oui! oui!——
Très-bien! très-bien!)

Mais la France, quoique misérablement abandonnée au jour de
ses plus mortelles angoisses, sera toujours la nation généreuse et
secourable à ceux qui souffrent; elle ne délaissera pas celui qui
n'a jamais cessé d'espérer en elle, et elle le fera d'autant plus
volontiers que tous aujourd'hui le traissent et le délaissent.

Et maintenant, que vous demandent les évêques? Le voici, et
je n'ai que trois mots à répondre à trois adversaires que je ren-
contre sur mon chemin; et qui ne sont pas méprisables par le
temps qui court, car ils s'appellent la calomnie, le découragement,
l'ingratitude. (Très-bien! très-bien!)

Et d'abord vous voulez la guerre, nous dit-on.

Je réponds: Non, nous ne voulons pas la guerre! . . .(Ap-
plaudissements à droite et au centre), et je renvoie cette contradic-
tion formelle aux calomniateurs qui, dans les dernières élections,
nous ont poursuivis de ce mensonge impudent. (Vives marques
d'approbation et applaudissements redoublés sur les mêmes bancs.)

Dans cette lugubre année, le sang français, le sang humain
n'a-t-il donc pas assez et trop coulé? La guerre! mais nous,
prêtres et évêques, nous en avons vu de trop près et trop longtemps
les horreurs pour ne pas la maudire . . . (Applaudissements.) Et
quand vous n'avez que cette calomnie à faire contre nous, c'est
que vous n'avez rien à dire. (Très-bien! très-bien!) . . . Nous
avons vu les villages ravagés, nos pauvres diocésains ruinés, les
chaumières incendiées, les villes bombardées, les veuves désolées,
les orphelins abandonnés . . . Ces infortunés, nous les recueillons,
nous les soulageons, nous les adoptons de concert avec vous, et
ce sont en pleurant nos larmes à leur désespoir que nous avons appris
de plus en plus à détester la guerre, la guerre étrangère, et surtout
les horreurs impies de la guerre civile. (Très-bien!—Bravo!)

Non pas, messieurs, qu'il n'y ait ici-bas, dans ce triste monde, des
guerres justes et nécessaires: après Sédan, vous combattiez pour
la justice, car vous combattiez pour le sol menacé de la patrie!
(Très-bien! très-bien!) Qui ne sait, d'ailleurs, que la guerre
d'erreur et desseins.

Mais, messieurs, de parler de telles choses dans une
Assemblée française ; mais, je le répète, la France entière a été
remplie de ces calomnies. ... (Parlez ! parlez !)

Sans aucun doute, je ne puis prendre un plaisir quelconque à
parler de ces indignités dont on n'a pas craint, d'agiter aux yeux
des masses populaires le ridicule et odieux fantôme ; mais enfin,
messieurs, ne serait-il pas temps de ne plus abuser de toutes ces
sottises ce grand peuple français, si grand quand il n'est pas livré
aux déclamateurs démagogues? (Très-bien !—Applaudissements.)
Et j'ajoute si digne de compassion, même, quand ses nobles qua-
lités le livrent sans défense à ceux qui l'égarent.
"Messieurs, laissez-moi vous le dire,—il en vaut la peine en ces temps où tous les honnêtes gens, dont parlait tout à l'heure si bien M. Thiers, doivent travailler d'un commun accord à l'apaisement et non pas à l'irritation des esprits . . . (Très-bien! très-bien!)—laissez-moi vous le dire : il n'y a pas loin de ceux qui calomnient les prêtres à ceux qui massacrent les otages! (Sensation profonde. —Très-bien! très-bien!) Non! non! messieurs! (Bravos et applaudissements.) Nul ne peut plus désormais se faire illusion sur la portée de ces vieux mensonges . . . (Assentiment.) Dans les temps de fermentation où nous sommes, il suffit d'un homme crédulé pour faire un criminel. (Nouvel assentiment.) Tout menteur peut inspirer un meurtrier et un incendiaire. (Applaudissements.)

"Eh bien, je le dis, ils ont menti, ceux qui ont accusé nos bons prêtres, si bons, si dévoués, si pauvres, si désintéressés, issus presque tous des familles populaires, de réver je ne sais quelle domination féodale insensée!

"Ils ont menti, ceux qui nous accusent de semer l'ignorance, car nous la tenons avec le vice pour la source de tous les maux. (Nouveaux applaudissements.)

"Ils ont menti, ceux qui nous accusent de vouloir ramener les hommes à la barbarie, car, sans le christianisme, ils y seraient, et ils y retourneront. (Applaudissements redoublés.)

"Mais parce que la France ne veut pas faire la guerre, est-ce donc qu'elle ne peut rien ni pour le pape, ni pour personne? Vous seriez, messieurs, trop humbles, si vous le croyiez.

"Le Gouvernement et l'Assemblée ont remis debout la patrie; la France, encore meurtrie, n'excite pas encore la crainte, mais elle ne demande plus la pitié. (Non! non!—Bravo!)

"Elle mérite, elle obtient le respect, elle compte de nouveau, et, qu'elle me permette de le dire,—c'est un de ses plus dévoués serviteurs qui lui parle,—si elle sait être tout à la fois forte et modeste, elle pèsera désormais encore tout ce qu'elle vaut dans les destinées du monde. (Très-bien! à droite et au centre.)

"Oh bien, que faisons-nous aujourd'hui, nous, évêques, en nous adressant à elle? Nous disons à la France : Si vous n'avez plus la puissance d'être seule à sauvegarder le saint-père envers et contre tous, donnez-vous du moïns l'honneur d'être la première à demander que l'Europe le garde avec vous . . . (Mouvement), la première à demander pour ce représentant de Dieu sur la terre, pour le chef suprême de ce noble culte dont parlait tout à l'heure si éloquemment M. Thiers, l'entente et la protection commune de tous ceux qui croient à Dieu, à l'Évangile et à la justice.

"Que fera l'Europe, messieurs? quel système adoptera-t-elle? Je l'ignore; mais je sais deux choses : la première, c'est qu'il sera infiniment honorable au Gouvernement français de prendre ici l'initiative, et la seconde, c'est, vous le savez comme moi, que la
"situation actuelle est intolérable, inqualifiable, et ne peut durer;
"et qu'il faut trouver moyen d'y mettre un terme pour l'honneur
"des nations et la paix des consciences. (Très-bien ! à droite.)
"C'est ce que proclamait une voix généreuse, éteinte ici-bas dans
"la douleur, et dont l'absence et le silence se fait souvent ici viva-
"ment sentir. 'La paix des consciences, disait M. de Montalembert,
"la liberté religieuse des catholiques a pour condition sine quâ non
"la liberté du pape; car si le pape, juge suprême, tribunal en der-
"nier ressort, organe vivant de la loi et de la foi des catholiques, n'est
"pas libre, nous cessons de l'être.' (Très-bien ! très-bien ! à droite.)
"Direz-vous: 'Oui, il y a là un grand intérêt catholique et social;
"mais nous avons trop à faire chez nous, et c'est une question étran-
"gère'?
"Je réponds en deux mots.
"Étrangère? non, car c'est une question universelle: elle pré-
"occupe les deux mondes; les îles de l'Océanie n'y sont pas indif-
"férentes. Et quand on sait, comme on vous le disait tout à l'heure,
"que tous les plus hauts intérêts de la France catholique y sont
"engagés, qui donc pourrait la dire étrangère à la France?
"Ah! messieurs, cela est vrai; oui, je le reconnais avec mes
"honorables contradicteurs, nous avons beaucoup à faire chez nous.
"Et si je vous disais ici, non-seulement toutes mes pensées à cet
"égard, mais tous les renseignements qui affluent de tous côtés, vous
"seriez effrayés. Vous me permettrez peut-être de vous le dire
"quelque jour, de déchirer, ou plutôt d'écarter, d'une main res-
"pectueuse, le voile que nous jetons sur les plaies profondes qui sont
"au cœur de notre pays.
"Avant tout, ce que vous m'accorderez dès aujourd'hui, c'est que,
"parmi toutes les choses que nous avons à faire, il y en a une qui
"doit dominer et inspirer toutes les autres.
"Avant tout, par-dessus tout, nous devons relever l'ordre social
"et moral; sans cela rien de fait. (Approbation.)
"Et pour moi, messieurs, silencieux témoin jusqu'à cette heure,
"j'admire chaque jour vos efforts, vos travaux, votre zèle, au milieu
"même des controverses les plus violemment agitées parmi vous; je
"me dis: il y a là au moins des hommes qui croient à quelque
"chose; mais laissez-moi l'ajouter: qui que vous soyez, vous ne
"fonderez jamais ni une république, ni une monarchie, ni une forme
"quelconque de société régulière, sans relever les âmes et les carac-
"tères, les mœurs et les familles... (Très-bien ! très-bien !), et vous
"ne les relèverez pas sans les rattacher à Dieu. (Très-bien ! très-bien!)
"Sans Dieu, vainqueurs ou vaincus, vous ne saurez que vous
"écraser et vous dévorer les uns les autres: témoin 93 et la Com-
"mune. (Vive approbation à droite et au centre.)
"Pas de liberté, pas de moralité, pas d'égalité, pas de société sans
"Dieu. (Mouvement.) Sur ce point, je fais à cette Assemblée, ou
"plutôt je fais à moi-même l'honneur de dire qu'il n'y a ni gauche
"ni droite ici. (Très-bien ! très-bien !) Nous n'avons tous qu'un
"cœur et qu'une âme; j'en appelle à tous les esprits libres et hon-
"nêtes.
"C'est par là qu'au fond, et malgré de trop longs et trop vifs dis-
"sentiments, et quelles que soient les ébouillonnages d'impétitude qu'on
"aperçoit de temps à autre à la surface, c'est par là que vous ré-
pandez tous aux vœux et aux aspirations de la France. La
"France attend Dieu ... et Dieu attend la France aussi! ... 
"(Bravo!—Appaudissements!) Il est son premier et infaillible
"prétendant, et son drapeau est incontesté. ... 
"M. de Gavardie.—Très-bien! très-bien.—Bravo! bravo! (Rires
"et exclamations à gauche et au centre gauche.)
"Mgr. Dupanloup. ... C'est la croix, la croix secourable pour
"tous, la croix qui a sauvé le monde, et dont l'illustre chef du pou-
"voir exécutif disait si noblement et si éloquemment : 'Cette puis-
sante religion qu'on appelle le christianisme montra Dieu souf-
"frant pour nous sur une croix, et subjuguant les hommes, parce
"qu'elle a satisfait leur raison par l'unité de Dieu, et touché leurs
"cœurs par la déification de la douleur.' (Mouvement. Très-bien!)
"Tel est le christianisme.
"Ah! vous vous plaignez quelquefois que la religion vous
"menace! ... Non : elle vous manque. (Appaudissements.)
"Voilà pourquoi le relèvement de la nation française, de toutes
"les nations catholiques, et si M. Guizot était ici, il ajoutait, de
"toute nation chrétienne, est essentiellement lié à la cause du
"christianisme, et, par là même à l'indépendance du chef suprême
"de l'Église; c'est parce que le pape est la clef de voûte du chris-
tianisme, que sa cause est la cause même de l'avenir moral des
"peuples et de la liberté des âmes.
"Qui n'entend pas ces choses n'a pas compris l'histoire, et n'aime
"pas la vraie liberté. Je le sais bien, messieurs, je ne le dissimu-
"lerai à aucun de vous, tout cela se dit facilement dans des discours,
"mais ne se traduit pas si facilement dans les faits. Tout cela,
"pour devenir l'or pur des nations, doit passer quelquefois dans des
"creusets terribles. Et nous, l'Église de France, depuis quatre-
"vingts ans, nous avons passé tour à tour par le creuset, et tout
"récemment nos victimes en ont souffert le feu le plus ardent.
"Il ne permettra de le dire de loin : le souverain pontife lui-
"même n'est-il pas dans le creuset? Pouvez-vous imaginer le cœur
"d'un vieillard, d'un père plus douloureusement saisi par des
"angoisses inexprimables, entouré qu'il est des Italiens, qui sont là?
"Donc, messieurs, car il faut conclure : Il faut que le souverain
"pontife soit libre et indépendant. Il faut que son indépendance
"soit souveraine; car, ainsi que le disait encore l'homme d'État
"dont j'ai déjà cité les paroles : 'Pour le pontificat, l'indépendance
"c'est la souveraineté.' Il faut qu'il soit libre et qu'il le paraisse;
"il faut qu'il soit libre et indépendant au dedans et au dehors.
APPENDIX IX.

"Et, malgré les nuages inévitables même autour des institutions divines, lorsqu'elles sont aux mains humaines, il est impossible que dix-huit siècles de grandeur et de bienfaits aboutissent à faire du successeur de Pierre le chaplain, plus ou moins mal payé, de Victor-Emmanuel. (On sourit.—Très-bien ! très-bien !—Applaudissements au centre et à droite.)

"Je dis que cela est impossible. Oui, il y a des impossibilités. En 1862, je me souviens, vous me permettrez de rappeler ce souvenir, qu'en arrivant à Rome, je me rendis à Saint-Pierre, et dans cette admirable solitude, dans cette splendeur, dans cette lumière, dans cette immensité, quand je m'agenouillai là et que je contemplai le spectacle sublime qui m'entourait et m'enveloppait de toutes parts, je venais de traverser le Piémont ; je me dis instinctivement : Quoi ! ils veulent venir se poser, s'établir ici ? C'est impossible ! (Rumeurs à gauche.)

"Vous pensez le contraire, soit ; mais nul n'y a tenu, ni les grands empereurs Constantin, Théodose ; ils sont allés s'établir ailleurs, et ils étaient les maîtres ; ni les plus fiers vainqueurs Attila et Genséric : après l'avoir pillée ils ont fui, et ce pauvre Victor-Emmanuel, ce . . . (Nouvelles rumeurs à gauche.)

"Permettez ! (Très-bien ! très-bien ! à droite.) Je ne fais que raconter ce qui est. Il a à peine osé y paraître : il est arrivé le matin et parti le soir ; il a senti qu'il ne pouvait faire son lit là. (Rire à droite.)

"Un homme qui a compté pour beaucoup dans la politique et le gouvernement des choses humaines, M. de Talleyrand, disait : "Qui ne sait pas attendre n'est pas capable de grandes choses." Ce qui fait que l'Eglise catholique est grande, même à travers tous ses malheurs, c'est qu'elle a su attendre et souffrir en attendant quand il le fallait. (Très-bien ! très-bien !)

"Je m'arrête ici, messieurs, et je m'associe aux évêques, mes vénérés collègues, qui ont eu l'honneur de vous adresser les pétitions dont on vous a fait le rapport. Je vous supplie de ne pas marchander à la religion la place qui lui convient dans la régénération de la société ; je vous supplie de ne pas diminuer, sans le vouloir, le rang de la France dans le conseil des nations européennes ; je vous supplie d'écouter la voix des évêques parlant au nom de leurs devoirs et des vôtres.

"Je supplie l'Assemblée de vouloir bien renvoyer leurs pétitions à MM. les ministres et, par eux, à l'illustre président du conseil. Placé au sommet des honneurs par la confiance universelle, et arrivé aussi par le cours des années au sommet de la vie, il sait, dans ces hauteurs, mesurer le prix des choses éternelles. (Approbation et bravos à droite.)

"Je remets avec une pleine confiance, que vingt années de fidélité n'ont fait qu'affermir, de tels intérêts entre ses mains, après les avoir recommandés, messieurs, à vos sentiments les plus pro-
fonds, à votre respect pour le malheur, à votre religion et à votre justice. (Applaudissements à droite et au centre.—Aux voix! aux voix!)

Une longue agitation succède à ce discours. * * * * *

M. Gambetta, à la tribune.—Messieurs, je n'ai absolument que deux mots à dire à l'Assemblée, et c'est pour cela que je pré-nais la liberté de les dire de ma place pour ménager ses instants.

Nous avions, avant le discours du chef du pouvoir exécutif, dé-posé une demande de scrutin et une demande d'ordre du jour pur et simple sur les conclusions de la commission ou des commissions qui avaient rapporté les pétitions mises en délibération aujourd'hui devant vous.

Cette demande d'ordre du jour, après les déclarations si nettes, si précises, si fermes sur la politique de nos relations extérieures avec l'Italie et le saint-siège qui ménagent à la fois leurs libertés, les droits de la conscience et la paix européenne, nous la retirons et nous nous rallions à l'ordre du jour même auquel s'est rallié le chef du pouvoir exécutif. (Applaudissements à gauche.—Mouves-ments divers.)

M. de Tarteron, rapporteur.—Messieurs, un seul mot : la com-mission accepte cet ordre du jour . . . (Bravo ! bravo ! à droite), l'ordre du jour de M. Target . . . (Bruit et agitation.)

M. le président.—Messieurs, la délibération n'est pas finie, je vous demande du calme et du silence.

On vient de me remettre un nouvel ordre du jour. (Excla-mations.)

Je vais vous faire connaître cet ordre du jour, accompagné, comme l'autre, d'une demande de scrutin. Je vous consulterai sur la priorité et vous voterez ensuite. (Bruits divers.)

Mais veuillez, je vous en supplie, rester en place.

MM. de la Rochette, vicomte de Rodez-Bénévent, du Temple, comte de Tréville, baron de Vinols, de Colombet, vicomte de Lorgeril, comte de Bois-Boisell, Combier, de Carayon-Latour, de Belcastel, Ferdinand Boyer, vicomte d'Aboville, comte de Courn-lier-Lucimière, marquis de Franclieu, comte de Cintré, Dezanneau, vicomte de Kermenguy, de Gavardie, Adnet et Duman ont déposé un ordre du jour motivé, accompagné d'une demande de scrutin.

En voici les termes :

'L'assemblée nationale, fidèle aux traditions de la France à l'égard de l'Église et de la papauté, s'associe aux protestations for-mulées par les éloquents rapporteurs . . . (Rumeurs), renvoie la pétition au chef du pouvoir exécutif, et passe à l'ordre du jour.' (Exclamations diverses.—Mouvement prolongé.)

Je ferai remarquer aux auteurs de la résolution que je viens de lire, que ce n'est point là un ordre du jour. (C'est évident !)

Ils reprennent les conclusions de la commission et demandent le renvoi au ministre des affaires étrangères. C'est en vain qu'ils
ajoutent ‘et passe à l’ordre du jour’; la résolution est un
renvoi. Conséquemment, on ne fait que reprendre purement et
simplement les conclusions de la commission dans cette résolution.
(Marques générales d’approbation.)
Plusieurs voix à droite.—C’est ce que nous demandons!
M. le président. Nous avons donc, messieurs, l’une ou l’autre
de ces deux résolutions à prendre : ou l’adoption des conclusions
des commissions, ou l’ordre du jour motivé, qui est exclusif de ces
conclusions, auquel M. le chef du pouvoir exécutif se rallie.
Une voix.—Et accepté par la commission . . .
Autres voix.—C’est une erreur!
M. le président . . . et qu’un des rapporteurs, par erreur, a déclaré
adopter, car ce n’est pas l’ordre du jour de M. Marcel Barthe,
mais celui de M. Target que la commission entendait accepter.
M. de Tarteron, rapporteur.—Oui! oui! — C’est cela!
M. le président.—La chose étant bien entendue, je vais consulter
l’Assemblée sur l’ordre du jour qui doit avoir la priorité.
After much further discussion, the “renvoi au ministre des
affaires étrangères” was, according to the wishes of the ultramontane
party, carried by a large majority.

APPENDIX X. PAGE 488.

No. 1.

Regulations of the College of Cardinals after the Death of Martin V.
(A.D. 1431) (a).

Noi tutti e singoli Cardinali infrascritti giuriamo e promettiamo
a Dio ed a’ suoi Santi, e promettiamo alla Santa Chiesa, che se
qualcuno di noi sarà eletto Papa, subito dopo la sua elezione
giurera e prometterà sinceramente, schiattamente ed in buona
fede di fare osservare ed adempiere efficacemente i capitoli in-
frascritti, e di darne ai Cardinali, nel termine di tre giorni dopo
la coronazione, una Bolla a perpetua memoria del fatto, che abbia
forza di decreta e di costituzione, a cui in perpetuo si debba
osservanza inviolabile, nè si possa contravvenire senza l’espresso
censo del maggior parte dei Cardinali presenti in Curia, del
quale consenso faranno testimonianza le firme loro:
Il Papa riformerà la Curia Romana nel capo e nelle membra,

APPENDIX X.

"qualunque volte e quante il Collegio dei Cardinali ne lo richiegga, ed osserverà la riforma come legge, nè potrà senza il consiglio ed il consenso della maggior parte dei Cardinali trasportare la Curia fuori di Roma, da luogo a luogo, da provincia a provincia, da patria in patria.

"II. Il Papa celebrerà o farà celebrare il Concilio generale solennemente e nelle debite forme nel luogo e tempo da stabilirsi per consiglio dei Cardinali, e riformerà in esso o farà riformare la Chiesa universale circa la fede, la vita ed i costumi, così rispetto ai chierici secolari e regolari, come ai religiosi e militari, e tanto riguardo ai Principi temporali, quanto alle comunità, in tutto ciò che appartenga al giudizio ed alle provvisioni della Chiesa.

"III. Il Papa non creerà nuovi Cardinali se non a' termini della forma e degli ordinamenti sanciti nel Concilio di Costanza, i quali avrà obbligo di osservare, se per consiglio e consenso della maggior parte dei Cardinali non sembrì opportuno fare diversamente.

"IV. I Cardinali avranno il diritto di esporre liberamente il proprio parere al Papa: non potrà il Papa fare violenza, nè permetterà sia fatta nella persona o nei beni loro, nè farà alcuna mutazione allo stato e provvisione loro se non in forza di espresso consiglio e consenso della maggior parte, nè potrà condannare alcuno, se non sia convinto pel numero dei testimoni scritto nella costituzione di Silvestro Papa.

"V. Il Papa non occuperà in modo alcuno, nè permetterà sieno occupati i beni dei Cardinali, Prelati ed altri cortigiani morti in Curia, ma permetterà, che secondo il diritto e la consuetudine, che si osserva in molti regni e regioni, se ne faccia uso secondo la volontà del defunto, lasciando alla coscienza di ognuno di legarli come più gli agrada, eccettuati soltanto quei religiosi, i quali abbiano fatta abdicazione della propria volontà, i beni dei quali passeranno a chi spettino per consuetudine, diritto o privilegio: non occuperà cosa alcuna, quanto ai diritti dei cappelli dei Cardinali defunti, nè permetterà che da altri sieno usurpati, ma lascerà liberi i Cardinali di trasferirli negli eredi testati o intestati, abolito qualsivoglia altro abuso.

"VI. Il Papa riceverà obbedienza da feudatarii, vicarii, capitani, governatori, senatori, castellani e da tutti gli ufficiali della città di Roma, non solo per se e suoi successori, ma per tutto il ceto dei Cardinali con tutti e singoli i capitoli opportuni, per modo che, vacando la Sede, le città, terre, luoghi, castella e fortezze sieno consegnate a mandato dei Cardinali liberamente e senza veruna contraddizione.

"VII. Il Papa permetterà che i Cardinali ricevano liberamente la metà di tutti i singoli censi, diritti, rendite, proventi ed emolumenti qualunque della Romana Chiesa, secondo la concessione di
APPENDIX X.

731

"Niccolò IV., che osserverà in tutto e per tutto: non darà alcuna "delle terre della Chiesa Romana in vicariato, feudo od enfiteusi; "non muoverà guerra, né farà alleanza con qualsivoglia re, principe "temporale o comunità; non imporrà nuove gabelle, o nuovi dazi "sulla città di Roma, né accorderà ai re o ad altro signore tem- "porale o comunità esenzione alcuna o altro contro la libertà eccle- "siastica sul clero, chiese o beni spettante alle chiese e luoghi pii "senza causa ragionevole e senza il consiglio e consenso della maggior "parte dei Cardinali.

"VIII. Non alienerà il Papa diritto alcuno in qualunque luogo "esso spetti alla Chiesa di Roma, né conformerà, né approverà le "alienazioni fatte dei diritti spettanti alle altre chiese, religioni "ed ordini militari senza il consenso e consiglio della maggior parte "dei Cardinali.

"IX. In tutti i casi, finalmente, nei quali sieno richiesti per legge "il consiglio ed il consenso dei Cardinali, dovrà di questo consiglio "e consenso constare nelle bolle e lettere apostoliche tanto per la "menzione espressa del consiglio e consenso prestato, quanto per "la firma dei Cardinali."

No. 2.

Précis of the Memoir of D'Aguiesseau upon the Royal Jurisdiction
over a Cardinal who is a French Subject (b).

Précis du Mémoire sur la Juridiction royale.

"Si la nature n'a point fait naître un cardinal indépendant de "l'autorité du roi, la religion ne le soustrait pas davantage à la puis- "sance de son prince.

"De quelque privilège que la Cour de Rome ait voulu flatter les "ecclesiastiques pour se les assujettir entièrement, le droit est "certainement du côté des princes, soit que l'on considère que les "ecclesiastiques ne cessent pas d'être hommes et citoyens en deve- "nant ecclesiastiques, soit que l'on examine la nature de la puis- "sance séculière, qui serait imparfaite si elle n'était pas universelle, "par rapport à la fin pour laquelle elle est établie, et qui ne se "suffirait pas pleinement à elle-même, s'il fallait qu'elle fût obligée "de demander la punition d'un de ses sujets à une autre puissance.

"Si le droit naturel est pour les princes, il n'y a que le droit "divin qui ait pu y déroger; et ce droit divin ne peut se trouver "que dans l'ancienne ou dans la nouvelle loi.

(b) Œuvres de D'Aguiesseau (ed. Paris, 1788), t. v. p. 337. The ful memoir is to be found at pp. 199–336.
APPENDIX X.

"Or, ni l'une ni l'autre ne donnent aucune atteinte au pouvoir des princes sur les ecclésiastiques dans les matières temporelles.

"Au contraire, l'une et l'autre le confirme, et surtout la loi nouvelle, la doctrine et l'exemple de Jésus-Christ, la conduite des Apôtres, les maximes qu'ils ont enseignées sur l'obéissance due aux princes, l'interprétation des règles de l'Église, la tradition la plus pure et la plus ancienne, la soumission des plus grands évêques, des patriarches, des Papes mêmes, sont autant de preuves éclatantes qui font voir que le droit des princes a plutôt été augmenté que diminué par les principes du Christianisme, et que ce qui n'était auparavant qu'un droit humain et naturel, est devenu, depuis l'établissement de la religion, un droit divin, et un précepte positif de la loi nouvelle.

"De ces principes, il est aisé de conclure que si l'Église a quel-que privilège en cette matière, elle le tient tout entier de la grâce et de la protection des souverains, qu'ils puissent l'accorder ou ne pas l'accorder, l'étendre ou le limiter à leur gré, le révoquer, le suspendre, le tempérer comme il leur plaît.

"Ainsi l'on fait sentir les empereurs romains, auteurs de ce privilège, soit par les termes dans lesquels ils l'ont accordé, soit par les exceptions ou les restrictions qu'ils y ont ajoutées, et surtout, par la célèbre distinction du crime ecclésiastique et du crime commun ou purement politique.

"L'Église a applaudi aux loix de ses empereurs, et surtout à celles de Justinien, qu'elle a canonisées, pour ainsi dire, en les insérant dans les collections de ses décrets.

"Ces loix ont survécu à la destinée de l'Empire romain; la France, surtout, les a reçues et observées sous la première race de nos rois, comme l'Église l'a reconnu elle-même dans un concile tenu en ce temps, et comme des historiens dont le témoignage n'est pas suspet, puisqu'ils étaient évêques, l'attestent également.

"Si dans la suite, et principalement vers la seconde race de nos rois, la piété des princes, l'intérêt du clergé, l'autorité des évêques qui s'attribuaient jusqu'au droit de déposer les empereurs, le mauvais usage, si on l'ose dire, que nos rois avaient introduit de se rendre eux-mêmes accusateurs des évêques coupables de Lèze-

"Majesté (ce qui répandait une suspicion générale sur tous les Tribunaux séculiers), ont paru ébranler les anciennes maximes, et donner lieu aux défenseurs de la juridiction ecclésiastique d'en avancer de nouvelles, que les premiers siècles de l'Église avaient ignorées; si les fausses décrétales qu'une imposture trop heureuse fit paraître en ce temps-là, appuyèrent et consacrèrent en quelque manière cette nouvelle doctrine; si la témérité des compilateurs des loix ecclésiastiques et politiques alla jusqu'à altérer et à tronquer les loix des empereurs, en les citant d'une manière in-fidèle: on a bientôt reconnu et la fausseté des principes, et le danger des conséquences de ce privilège abusif; on a senti qu'il
On s’aperçut donc du piège qu’on avait tendu à la piété des princes, sous le voile de la religion. On revint à la sagesse et à la simplicité de l’ancien droit. Ce retour fut marqué par plusieurs traits éclatants, et entraîna par des lettres d’abolition qu’un Archevêque de Bourges fut obligé d’obtenir du roi, pour avoir avancé dans des statuts synodaux, que les clercs ne pouvaient être ni poursuivis, ni punis civillement ou extraordinairement, par un juge seculier.

Ainsi on rétablit pleinement la distinction que les empereurs romains avaient faite entre le crime ecclésiastique et le crime politique. Les Papes mêmes furent obligés de donner lieu au rétablissement de cette distinction, en reconnaissant qu’il y avait certains cas énormes qui faisaient perdre aux coupables le privilège clérical.

C’est surtout au crime de Lèze-Majesté qu’on peut appliquer cette règle, quoique la modération de nos rois les ait souvent porté à attendre le jugement du Tribunal ecclésiastique, avant que de faire condamner, dans les Tribunaux séculiers, les clercs accusés de ce crime.

Les évêques n’ont rien qui les distingue en cette matière des ministres d’un ordre inférieur.

C’est une vérité reconnue par ceux mêmes qui sont le plus opposés en ce point à l’autorité des rois, puisque les principes généraux qu’ils établissent, comprennent les moindres clercs, comme ceux du premier ordre, et que c’est pour cette raison, qu’on a donné au privilège dont il s’agit le nom de privilège clérical.

 Aussi les princes se sont toujours maintenus dans la possession de connaître des crimes commis par les évêques, comme de ceux qui avaient été commis par d’autres ecclésiastiques.

On peut rapporter les preuves de cette possession à quatre temps principaux.

Le premier, depuis la venue de Jésus-Christ, jusqu’au règne des enfans de Constantin.

Le second, depuis ce règne jusqu’au commencement de la seconde race de nos rois.

Le troisième, depuis la seconde race, jusques vers le commencement de la troisième.

Et le dernier, depuis la troisième race, jusques à présent.

De ces quatre temps, le troisième seul est douteux, à cause des mauvaises maximes qui commencèrent à s’introduire alors, sur l’autorité des princes, et sur celle du Pape.
On trouve dans les trois autres des preuves certaines du droit des princes. Plusieurs exemples d'évêques, de patriarches, de Papes mêmes, jugés par les empereurs, ou par les Tribunaux séculiers, l'établissent; les exemples mêmes des jugemens ecclésiastiques rendus sur des crimes publics dans ces deux premiers temps, la confirment, puisqu'on voit que c'est par l'autorité des princes que les évêques en ont été établis juges.

Sans parler de tout ce qui s'est passé sous les empereurs romains, et sous les deux premières races de nos rois, on trouve près de vingt exemples d'évêques accusés dans des Tribunaux séculiers, six ou sept évêques condamnés à des peines légères, à la vérité, mais qui ne prouvent pas moins pour cela, l'autorité légitime de la Puissance qui les condamnait.

S'il y a plusieurs procès criminals commencés contre des évêques qui n'ait pas été suivis d'un jugement définitif, la religion des princes, la conjoncture des temps, les prétentions des Papes, par rapport aux jugemens canoniques qui retardaient les jugemens séculiers, parce qu'ils devaient les précéder, en ont été les principales causes, sans qu'on en puisse tirer aucune conséquence contre le droit incontestable des rois.

Si l'on passe de la personne des évêques à celle des cardinaux, le privilège des derniers ne paraîtra pas mieux établi que celui des premiers.

On ne peut les considérer que comme ministres de l'Église, ou comme ministres d'un prince étranger.

Si on les envisage dans leur état ecclésiastique, ils ne sont que diacres, prêtres, ou évêques, et par conséquent ils ne peuvent de droit avoir de plus grand privilège que ceux qui sont dans le même degré de la hiérarchie. L'honneur qu'ils ont d'être consacrés au service de la première Église, d'être à présent les électeurs des Papes, et les conseillers nés du Souverain Pontife, peut bien les distinguer dans l'ordre de la puissance ecclésiastique, mais non pas les soustraire à une puissance d'un autre genre, c'est-à-dire, à l'autorité temporelle des rois; et quelqu'élevés qu'ils soient, peuvent-ils prétendre avoir plus de privilège que le Pape même, qui tant qu'il n'a pas réuni la qualité de prince temporel à celle de chef de l'Église, a été soumis à la puissance des empereurs.

Si on les considère dans leur état politique comme ministres d'un prince étranger, l'engagement qu'ils contractent avec lui n'étant que d'un droit purement civil et positif, ne peut rompre les nœuds naturels et indissolubles qui attachent un sujet à son souverain; toute autre obligation doit céder à ce premier devoir; souvent et presque toujours, ce que les cardinaux doivent au roi n'est point incompatible avec ce qu'ils doivent au Pape; mais si ces deux engagemens se trouvent contraires, celui que Dieu même a formé, doit l'emporter sur celui qui est l'ouvrage de l'homme.
Ainsi le supposèrent autrefois nos pères, lorsqu’ils faisaient jurer aux cardinaux de revenir de Rome, aussitôt que le roi les rappellerait auprès de lui.

Ainsi le Parlement l’a-t-il encore déclaré de nos jours, lorsqu’il reçut le Procureur-Général, appelant d’une bulle d’Innocent X, qui défendait aux cardinaux de sortir de l’état ecclésiastique, sans la permission du Pape.

Ainsi l’ont souvent reconnu les Papes mêmes, lorsqu’ils ont supposé qu’un cardinal pouvait commettre un crime de Lèze-Majesté, contre son prince naturel, et par conséquent qu’il ne cessait point d’être sujet pour devenir celui du Pape; car il n’y a qu’un sujet qui puisse commettre un crime de Lèze-Majesté.

Il ne faut donc pas s’étonner après cela, si depuis même que cardinaux sont parvenus au point de grandeurs où nous les voyons aujourd’hui, ou n’a point douté en France que le roi ne fût en droit de leur faire faire leur procès, lorsqu’ils commettraient un crime, et surtout un crime de Lèze-Majesté.

Le Cardinal de Constance fut accusé sous Louis XI, et condamné à une amende.

Le Cardinal Ballue fut accusé et arrêté prisonnier sous le même prince. Dans toute négociation qui se passa, sur ce sujet, entre le Pape et le roi, la France soutint hautement les mêmes maximes qu’elle soutient encore aujourd’hui, le pouvoir suprême de rois dans les matières temporelles, établi par le droit divin, tant sur les ecclésiastiques, de quelque état qu’ils soient, que sur les laïcs, la distinction du délit commun, et du cas privilégié, déjà si ancienne dans le royaume, qu’on ne se souvenait point d’avoir jamais vu pratiquer le contraire; enfin l’atrocité du crime de Lèze-Majesté, qui fait cesser toute exemption, et tout privilège.

Le Cardinal de Châtillon fut non-seulement accusé, mais condamné sous le règne de Charles IX, par un arrêt célèbre du Parlement; et si la peine ne paraît pas répondre au titre de l’accusation, il n’en faut accuser, suivant toutes les apparences, que la conjoncture du temps dans lequel, arrêt fut rendu; mais la compétence du Tribunal n’en est pas moins bien établie.

La mort du Cardinal de Guise, et la détention du Cardinal de Bourbon sous Henri III, donnèrent occasion d’examiner à fond cette matière; et trois grands prélats, le Cardinal de Joyeuse, le Cardinal d’Offat, l’Évêque du Mans, justifièrent la conduite d’Henri III, par des principes qui sont encore plus véritables, quand on les a appliquées à une accusation instruite dans toutes les formes.

Le Cardinal de Sourdis décrété de prise de corps par le Parlement de Bourdeaux sous les yeux de Louis XIII, et avec l’approbation expresse de ce prince; enfin le Cardinal de RETZ accusé par ordre du roi, en vertu d’une commission adressée au Parlement,
"sont autant d'exemples qui prouvent la possession de nos rois et de nos magistrats sous leur autorité.

"Si des considérations de politique, si des raisons d'État, et souvent des conseils inspirés par des intérêts particuliers, ont suspendu quelquefois ces grandes et importantes affaires, l'autorité du roi n'y a souffert aucun préjudice ; puisqu'après tout, il ne faut pas être moins compétent pour instruire un procès que pour le juge, et pour décréter un coupable, que pour le condamner.

"Ainsi la qualité de cardinal n'effaçant point les engagements naturels, y ajoute encore ceux de la reconnaissance, et un cardinal qui viole les uns et les autres, mérite d'être poursuivi, et comme rebelle à l'égard de son prince, et comme ingrat à l'égard de son bienfaiteur.

"Si la place qu'il tient dans le Sacré Collège lui attribue, outre cela, la qualité d'évêque d'un diocèse étranger, cette qualité ne peut lui donner un privilège plus grand que la dignité même de cardinal ; à la vérité, s'il commettait une faute comme Evêque d'Albano ou d'Ostie, il n'aurait que le Pape pour juge ; mais dès le moment qu'il s'agit d'un crime de Lèze-Majesté commis dans le royaume, le roi seul peut venger sa majesté méprisée ; et il avilirait ce caractère auguste, qu'il n'a reçu que de Dieu, s'il était obligé d'aller demander justice contre un sujet infidèle, à un prince étranger."

APPENDIX XI. PART VIII. CHAPTER XI. PAGES 503–10.

THE RELATIONS BETWEEN THE GREEK AND FOREIGN CHURCHES.


II. THE PAPAL ENCYCLES, LITTERAE AD ORIENTALES, 6 JAN. 1848; ANSWERED BY THE PATRIARCH OF CONSTANTINOPLE. SEE AUTHORITIES, PP. 508–9.

III. THE ATTEMPT OF THE POPE TO FOUND A NUNTIATURA IN ARMENIA; AND THE REFUSAL OF THE PORTE TO RECOGNISE ANY SUCH NUNTIOUS, ON THE GROUND THAT THERE WAS THEN RESIDENT AT CONSTANTINOPLE AN ARME-
of the Greek Church. (a) July, 1868 A.D.

IV. The Papal mission to the Patriarch of Constantinople, with the summons to attend the Vatican Council, Oct. 28, 1868 A.D.

Of this last attempt the best account given, it appears, by authority, is as follows, in Greek and English:—

'Αξιότιμοι ΚΚ. Συντάκται τοῦ 'Αιαστ. 'Αστέρος.

'Επειδὴ ἄλλοι άλλως εξετέθησαν τὰ κατὰ τὴν γενομένην πρὸ τινών ἡμερῶν ἐν τοῖς Πατριαρχείοις ἐπίσκεψιν τοῦ διοικητοῦ Δόμ. Τέστα, ἀντι-προσώπων τοῦ ἀποδημοῦτος τυποημηκου τῆς Α.Μ. τοῦ Πάπα Πίαν Θ', καὶ πάντων ἔνεκα ἐξετήθη. Παρὰ τινῶν δημοσιογράφων ἀκρίβες πληροφο-ρία, ἀποστελλόμενοι καὶ πρὸς ὑπὸς τήν ἐσόδευστον ἐκθέσιν, ὄπως ὁμοιοεισέταν αὐτῶν διὰ τοῦ προσέχους φιλλῶν τῶν Ἀνατολικοῦ Ἀστέρου, πρὸς διαφωτισμὸν τῶν ἡμέρων ἀναγνωστῶν.

Τῇ 10 ΣΒρίου 1868.

'Εκ τοῦ γραφείου τῆς Μ. Πρωτοσύγκελλας.

'Ἡ ἐν τοῖς Πατριαρχείοις ἐπίσκεψες περὶ προσκήνεσιν εἰς τὴν ἐν 'Ῥώμῃ συγκροτημένην Σύνοδον.

Τῇ πέμπτῃ τῆς παρελθόντος Ἑδομήνας (3 ΣΒρίου) ἐλθόντες εἰς τὴν Μ. Πρωτοσύγκελλαν ἄδειάδες δῶν ἐκ τῆς συνόδου τοῦ Κ. Βροονόντη, τυποημηκοῦ τῆς Α. Μ. τοῦ Ἐ.Ρώμης Πάπα ἐν Κωνσταντινούπολεῖ, ἐξήθευσαν ἡμῖν καὶ ὥραν ἀκροίσεως παρὰ τῷ Παναγιώτατῷ Πα- τριάρχῃ ἐκ μέρους τοῦ Δόμ. Τέστα, ὡς τυποημηκοῦ τοῦ ἐν 'Ῥώμῃ ἀπο- δημοῦτος Κ. Βροονόντη. Ἡμέρα ὑφεσθή αὐτοῖς τὸ σύβατον (3 ΣΒρίου), ὥρα ἐς ἡ μεταχ. 3—5 τῆς ἡμέρας.

Περὶ τὴν ἑ. ὥραν τοῦ σαββάτου ἦλθεν ὁ Δόμ. Τέστας, συνοδεύμονος καὶ υπὸ τριών ἐτέρων ἀδείαδας, ὥς ὁ Ἀ. ἐλάλησε ὁπωσοῦ καὶ τα 'Ελληνικα, οἱ ἡ πάντες ἐλάλουν τὰ Γαλλικά. Μετὰ τὴν ἐν τῇ Πρωτοσύγκελλα γενομένην ἐξέσων καὶ περιποίησαν, ὑγραφήσαν ύπὸ τοῦ Μ. Πρωτο- σύγκελλος πρὸς τὴν Α. Θ. Παναγιώτα.

'Ελθόντες παρὰ τῇ Ἀ. Θ. Π. μετὰ τὸν χειραστασιαν αὐτοῦ ἐκκαθα- σήσαν τῇ φλάσσον τροποτῇ τοῦ Παναρίχου. Ἐν φ' ἐς ἡ Ἀ. Θ. Π. ἐπὶ ἐξηκολουθεῖ τὰς πιθανείας πολύμενος φιλοφίασες καὶ ἀφροφυσίας, ἡγέρθησαν πάντες, καὶ τοῦ Δόμ.-Τέστα ἔκαγγύγωντο ἐκ τοῦ κύλου αὐτοῦ φυλάδιον τοῦ χρυσότετον μετὰ πινακίδων ἐρυθροπρόφυρω, καὶ ὀρέγοντος αὐτοῦ ταῖς χεραὶ τοῦ Πατριάρχου, καὶ με τοῦν αἰθέας εἰπέν 'Ἐλληνικα. "Ἐν ἀπώσια τοῦ Κ. Βρουνάνη ἐρχόμεθα νὰ πρόκα- λεσομεν τὴν 'Αγιώτητα σας εἰς τὴν ἐν 'Ῥώμῃ γεγομένην Οἰκονομ—" μενεκῆν Σύνοδον κατὰ τὸ προσεχεῖς ἐτὸς τῇ Ο. Δεκέμβριοι, καὶ ἐπὶ "τοῦτος σας παρακαλοῦμεν νὰ ἐκδήθητε τὴν παρόνα προσκλήτηριον "ἐπιταλαῖν." "

Ἡ Ἀ. Θ. Π. νέωσα διὰ τὴς χειρὸς ἱνὰ καταφεύγῃ ἐπὶ τοῦ ἀνακλίντρων, ὅπερ ἐξάστατον ὁ Δόμ.-Τέστας χρυσότετον φυλάδιον, καὶ ἵνα κατε-

(a) Offizielle Aktenstücke, II., pp. 135-8.
speech of the patriarch.

the papal letter contains principles ah-

or those of the orthodox eastern

hurch, and of the eccumenical coun-

cils.

"ean h' efmeris tis 'r'mhis kai ex auton arnomaime nai loxtai efmerides den epermiesen ton ton a. makarios htopos proskeplhtirion epistolh eis ton en 'r'mhi, wc legeste, oikoumenikh sunodos, kai epomevos, enan xynoumen ton skopon kai to periechomenos ton epistolh kai tas arhias ton a. m., eucharisths htelemen apodecheta graamma paro to patriarchon ton palaia 'r'mhis tevmpomen, proskekontes y' akyousmven nein ti. 'epidei dromos dia ton efmeriwn diadothiei h' prospelhri epistolh efanevose tas arhias ton a. m. arhias olwv apodousias eis tas ton orhodokion 'anatolikh 'ekklesias, dia to sto to meta luths amia eikarmonies lenomen pro ton in onos oisotitha, oti dein xynambe na paraexhovmen oun proseklhshin tuap, oun to toioth gramma ton a. m., epakalimalon tas autas pantote arhia, arhias antistratenvmenas eis to pneuma ton evangeliou kai eis ton eisaskalian ton oikoumew-
nikon sunvovon kai ton angwion pateron. 'a. m. poishasa to aut 216kha kai kata to 1848 etos proekallese ton orhodokon 'anatolikh 'ekklesian eis anaptisin de egkliion epistolh, katabeikynousi aplw kai saphw ton antidean ton arxwn ton 'r'mhis pro ton pae-

troparodion kai apostolhikia, kai ou monon ouv eurastrhshs, allla kai luvpnhsis ton a. m. 'otw de alhrhous evneprsthsh tote 'a. m., apediezen eunagwas h' par auths antapantseis. kai 'epidei 'a. m. dein fainetai perakevleias ton eanptis arxwn, ouni heiws 'heia karitoi exekeivmen ton 21metrewon, dia to sto to oinoukta luta stegromen na paraasevapwein autiws eis mztan, ouni anaexasai palaias plhgas anektometha, kai anerethisa misi esesevmena dia suhpsesi kai logoswmacis, aiteices aposthounw osi eti to polw eis rizeis kai apexheias, en x ekatosi simeion, etper pote, exomen anagkh evangeliakhs kai koinwnikhs agptas kai svymathasia dia twn peripost-

chontas ton 'ekklesian ton krstiton pollois kai pantoideides kinwous kai perasimos, oustia estai xynatshis kai svndia-

lezis spondexikhs, mi uparchontos kovnoi drmpthriov ton autwn arxwn. kai allwes de heiwsi founonim, oti h episthsastata kai apatestasth 'lywos ton toiovtwn zethmatwn estin h istoriikh. 'epidei de, 'uprmen 'ekklesiia pro dega aivwov, ta auta echiwsa dymaata ex te 'anatolh kai dousi, eni th presbitepor kai th nea r'mhi, anadiro-
mwmen ekateres eis e-einw kai edwmen upoteroprophtevon h' afeleiv 'ekopytasthe h' prosethik, 'eun uparychi kai ouv uparychei prosterethsh to afairethen, 'eun uparych, kai ouv uparychei kai toto suymatai anestathtth evthehshmeia eis to aut othmeion ton kosmologikos orhodozias, otopos h' r'mhi ton kaiton aiiwnan makarmonemh ena bloh, dreskeina na platonh th chasma dia nevon exi dymatwv kai 'esismatwn, eksteropomenw thn ierak paradosewen. 'a. lebav 'dou tesastas. otopias tiwos exnvoi diafwnwstas arhias h umetara 'agios. 'a. patriarcho. "iga paraleiptomen tw kathkeasta, hmeis, ef' oson
ο Ἑκκλησία τοῦ Σωτῆρος ἐπὶ τῆς γῆς, δὲν δυνάμεθα να
παραδεχθῶμεν, οτι εν τῇ ἀλη Ἐκκλησία τοῦ Χριστοῦ ὑπάρχει
ἐπίσκοπος τες Ἁρχῶν και κεφαλὴ ἄλλη και ἄλλος παρὰ τὸν Κύριον.
Οτι Πατριάρχης τις ὑπάρχει ἀλάθης και ἀναμάρτητος, ἡμῶν ἀπὸ
cαθέδρας, και ὁ πάπας ἕσχον τα πρεσβεία της ἀδύνας οὐκ ἀπὸ Συνοδικῶν
ἀνθρώπων, ἀλλ' ἐκ θεοῦ, ως λέγετε, ἰδιαίτερα, και τα τούτου ὁμοια.
Ὁ Δ', Ἀξιόν ἦν οὐδόλως προτίθηται να μεταβάλη τας
ἀρχὰς αὐτής.
Ο Β', Ἀξιόν. "Ἐπειδή ἡ Φλωρεντιτὴ Σύνοδος ἀνακρίνασα τά
ταυτά, ἦνωσε τάς δῶν Ἐκκλησίας, ὑπελείφθησαν δὲ τινὲς ἐξ τῆς
ἐνώσεως, τούτως προσκαλεὶ ὁ ἄγ', πατήρ εἰς τὴν προσεχή Οἰκουμε-
νικήν Σύνοδον, ἵνα καὶ αὐτοι πληροφορηθήσετε ἐνωσώμεθα, "
Ο Πατριάρχης. "Πόσα ἐρρέθησαν καὶ ἐγγράφησαν κατὰ τε τῆς
Φλωρεντιτῆς Σύνοδου, μόνον ἀπαίτετος ἀνθρώπως ἑνέχεται ν' ἀγνοεῖν'
ἡ δὲ ὑπ. ὑπάτης οὐκ ἐστε ἐκ τοῦ κύκλου τουτον. Καὶ ἥνε ἀπὸ τῆς
tελευταίας συνεδρίασες ἑκείνου του καθηγαγαμενον Συνεδρίου
ἀρξαμένων τῶν ἀντιγλήσεων, ἀπέδωσεν ἡ βεβαιασμένη ἐνωσιν εἰς τα
σπάγανα της.—Συνέδριον, συγκροτηθὲν εἰς λόγους πολεμικος,
λόγους καθαρως γρηγοραν, καὶ ἀποληξαν εἰς συμπέρασμα,
ἐπείθησαν δὴ πρὸς καιρὸν ὅλον τοις των ἡμετέρων διὰ λοιπονιας καὶ
πάσης βιας καὶ ἀπέλης ὑπο τοῦ τότε παπεριωτος, τοιουτο Συνεδρίων
οὐδε τοῦ ἁγίου ἀνόματος της Σύνοδος ἐστιν ἄδικον. Καθ' ἡμᾶς
Οἰκουμενικὴ Σύνοδος καὶ Οἰκουμενικὴ Ἐκκλησία καὶ ἀληθὴ Καθ-
λικτὴς ἐστι καὶ λέγεται ἐκεῖνο το ἁγίον καὶ ἀνόματον σῶμα, εν τῇ
ἀνεξαρτήτως του θλικου πληθυσμου αυτου συγκεφαλαιοωουν ἀγνοη
διεισδυκα των Ἀποστόλων, καὶ της πιστες πάσης τοπικῆς Ἐκκλησίας,
απερικεθας καὶ βασιναθετας απο της θεμελιωσεως της Ἐκκλησιας
μεγα των οικτη πρωτων αιωνων, εν οις ει πατερες της της Ἀνατολης κα
της Δυσεως, και αι επτα και μονα Οἰκουμενικα και ἀγιωτατα κα
πνευματικενην Συνοδοιθενθε οντοτοι εις τα ει αυτο ασθηνων φθειρα
τον Ευαγγελου. Ἐκείναι αι Σύνοδοι καὶ ἐκείνοι οι σεβασμοι Πατερες,
ὁν γνωστα τοις πασιν εις τα συγγραμματη, γινεσθωσαι εις τα απαιτήτο
καὶ ἀσφαλῆς ἀδηγος παντος χριστιανου καὶ ἑπεκποτυ της Δυσεως,
tων ειλικρινως ποθοντος καὶ ζητουντος την Ευαγγελικην ἀληθειαν.
Ἐξεκεινο εις το υπηρτον κριτηριον της χριστιανικης ἀληθειας,
Ἐκείνοι εις ειναι της ἀσφαλης ωδος, εφ' ης ἐνυαμαθεια τα συναντηθωμεν εν
των αγιω φηλαμας της ὁμογενειας ἐνωσως πας δε ὁ οτε της
τριχαισ ἐκείνης περιποευμενους θεωρηθησεται παρ' ἡμιν ἐκκεντρο
καὶ ἀναρμολογω εις τη συγκεκριμενε περι εαυτυ τα μελη της
ifice δοφου Καθολικης Ἐκκλησιας. Ει̂ δε των των δυτικων
ἐπισκοπων, ἔχοντες ἀρμαθλοι περι των δυτικων ὁμογενων αυτων,
θελουν να συνελθωσι και συνερχαθωσι και αναθεωρηθωσι αυτω
καθημεραν, ει βούλονται ημεις ουδεμιας ἀρμαθλοι εχουμε περι των

APPENDIX XI.

3 B 2

Apostles all equally enlightened by the Holy Ghost.

What is an Ecumenical Council.

The Seven Ecumenical Councils.

The Synod of Florence, child of hunger, fraud, violence, and death in its swaddling clothes.
APPENDIX XI.

"πατροπαραδότων καὶ ἀναλλωτῶν ὁγματῶν τῆς εὐσεβείας. Καὶ ἅλλως δὲ, ὁ σεβάσμιος ἀδελφός, περὶ Οἰκουμενικῆς Συνόδου ὄντος τοῦ λόγου, δὲν διαφέρειν βεβαιῶς τὴν μνήμην ὑμῶν, ὅτι οἱ Οἰκουμενικοὶ Ἀδριατοὶ ἄλλως πρὸς συνεκκρότουν, ἥ ὡς ὅπως ἦν διεκδήμητον ἦν τῆς Ἰ. Μ. 'Εκατὸς ὃς τῆς Ῥώμης Μακ. Πάπας ἦπατόντο τῆς ἀποστολικῆς ἱστομίας καὶ ἰσαδελφίας, ἔτρεπεν, ὡς ἐν ἱσοῖς ὑσσὴ τῆς ἀξίας καὶ πρῶτος τῆς ἔνδος τάξει κατὰ κανονικὸν ἔκτακον, λέων ἀπευθυν. γράμμα ἐξαιτέρων πρὸς ἐκαστον τῶν Πατμαρχῶν καὶ τῶν Συνοδῶν τῆς Ἀνατολῆς, ὃν ἦν ἐνδεχόμενον ἐγκυκλίῳ καὶ ἡμεροσγαρφίῳ, ὡς ὁ πάντων Ἀρχῶν καὶ Δησπότης, ἀλλ' ἐν ἐρωτήσει ἀξελέφων ἀξελέφων, ἰσότιμος τε καὶ ἰσοδαίμον συνεγκρίνοις, τοὐ καὶ πῶς καὶ ὡς καὶ ἑκατέρας Συνοδόν τὴν συγκράτησιν. Τούτων ὁ πάντων ἐχόσων, ἢ ἀναδεμείσθη καὶ ἤμετροι ἐς τῆς ἱστομίας καὶ ἐς τὸς Οἰκουμενικὰς Συνοδοὺς, ἡ ἵστομικὴ κατορθωθή ἢ παρὰ πάντων ποθουμενή ἀληθὴς καὶ χριστιανοσφιλέτας ἐνώσεως, ἢ πάλιν ἀρεσκθοῦσθομεν ἐς τὰς ἤμων δηνεκεῖς προσευχῆς καὶ δέησεις ὕπερ τῆς εἰρήνης τοῦ σύμπαντος κόσμου, τῆς εὐσταθείας τῶν ἁγίων τοῦ Θεοῦ Ἐκκλησίας, καὶ τῆς τῶν πάντων ἐνώσεως, ἐν δὲ τοιαύτῃ περιπώσει μετὰ λύπης διαθεσθοῦμεν ἡμῖν, ὅτι περιτήν καὶ ἀκραυν νομίζων τὸν τε διακόσιως, καὶ ὅπερ συνεπάγετο ἐντολομάιναι τοῦτο φυλάσσον."

Ὁ Δ. ἀδελφό. "Δύσοναι ἢ ὅτι μέγα ἢ προσευχή νὰ κατορθώσῃ τήν ἔνωσιν; Ἀρκετοῦτος τινος αὐτής, ἢ καὶ ἀπεκδεχόμεθα τήν θερετικὴν αὐτοῦ παρὰ τοῦ Θεοῦ, καὶ ἐπὶ τοῦτο ἀπευθύνωμεν ἑκατέρας εἰς ἐνώσεις καὶ τὴν αὐτὴς, διὸν συνεργόις νὰ νομίζων τε διακόσιως, καὶ ἵστομικὴν σιωπήν." Ὁ Πατριάρχης. "Περὶ τῆς θρησκευτικῆς καὶ πνευματικῆς νοσημάτων τοῦ λόγου ὅστος, μόνος ὁ παντογνώστης καὶ τῆς ἐκαστοῦ Ἐκκλησίας ἡμελείωτης καὶ τελευτῆς Χριστοῦ ὁ Κύριος γινώσκει ἀκρεβώς τῆς ο ὑπόσων καὶ κατὰ πόσων νοσεῖ καὶ ὅποιον τοῦ ἔκδος τῆς νόσου καὶ ὅποιον τὸ κατάλληλον φάρμακον. Διὰ τοῦτο πάντα ἐπαναλαμβάνωμεν, ὅτι ἀναγέννησε πάσα προσευχής, καὶ προσευχής θερμής καὶ ἀδιαλέπτου πρὸς τὸν Κύριον ἡμῶν, τὴν Ἀναστάσιν, ἡν τοῖς πάσιν ἐμπνεύσεως οἱ θεολόγοι καὶ σωτηρία."

Ταῦτα εἴποντα ἡ Ἐ. Θ. Π., ἤτειλα τῷ παρακαθήμενῳ καὶ ἐμφάνισε τοὺς λόγους αὐτῶν Γαλλιστὶ Μ. Πρωτοσυγκέλλῳ, ἢν, λαβὼν ἀπὸ τοῦ αὐτοκλίντρου τὸ φωλίαδον, ἐπιστρέψει ἀυτῷ ἡ στῶτα τοὐτοτηρήθη τοῦ Κ. Βρουνόνη καὶ ὅς ἀναπάτητες καὶ ἀποδότες τὸν ἀνίκουσα σέβασμα καὶ ἰδιοφόρως ἀντιγερηθῆκεν ὑπὸ τῆς Ἐ. Θ. Π., ἔξηλθον, καὶ συνοδευόμενοι ἔς τῆς κλίμακος ὑπὸ τοῦ Μ. Πρωτοσυγκέλλου, ἀπῆλθον.

'Ἀνατολικὸς Ἀστήρ, 12 Ὀκτωβρίου. Ἐτος Η. 1868.' Ἀρίθ. 612.
APPENDIX XI.

TRANSLATION.

"(Extracted from the Official Account of the Protosyncellia.)"

"The discussion at the Patriarch’s Palace concerning the invitation to the Council to be held at Rome.

"On Thursday in last week (October 3rd), two priests of the company of Monsignor Brunoni, the Envoy of his Holiness the Pope of Rome at Constantinople, came to the Protosyncellia, and requested an audience with the Most Holy Patriarch, on the part of Dom Testas, as representative of M. Brunoni, now absent at Rome. The time appointed for the interview was between nine and ten on Saturday, October 5th.

"About ten o’clock on Saturday Dom Testas arrived, accompanied by three other priests, of whom one spoke Greek a little; all, however, spoke French. After interchange of salutations at the Protosyncellia, they were conducted by the Protosyncellus to his Holiness. Having entered the presence of his Holiness and kissed his hands, they took their seats at the kindly invitation of the Patriarch. While his Holiness was proceeding with the customary expressions of kindness and goodwill, they all rose, and Dom Testas took from his bosom a letter, tied with gold cord, and in a purple cover, and handed it to the Patriarch, while the priest next to him said, in Greek, ‘In the absence of Monsignore Brunoni, we come to invite your Holiness to the Ecumenical Council to be held at Rome in the next year, on the 8th of December, and therefore we call on you to accept this present written summons.’

"His Holiness having indicated by a motion of the hand that the gold-fastened epistle which Dom Testas brought should be laid on the desk, and that they should be seated, addressed them in an earnest tone indicative of paternal love and kindness. ‘If the daily papers of Rome and others deriving information from them had not published the letter of summons of his Holiness to the, as you call it, Ecumenical Council at Rome, and if we had not consequently known the object and contents of the letter and the principles of his Holiness, we would thankfully have received the letter sent from the Patriarch of Old Rome, expecting thence to obtain some information. Since, however, the letter of summons already published in the newspapers has revealed the principles of his Holiness (b)—principles utterly abhorrent from those of the Orthodox Eastern Church—on this account at once sorrowfully and straightforwardly we tell your Reverence that we cannot

(b) The doctrine of the Immaculate Conception has been condemned as ‘new and false’ by the Greek Church. See, too, ἡ ἰενή τῆς ὀρθοδοξίας, 104–6."
receive either such a summons or such a document from his Holiness, assuming as he does the same principles as have always been assumed by Rome—principles antagonistic to the spirit of the Gospels and to the teaching of the Ecumenical Councils and of the Holy Fathers. His Holiness having taken the same step also in 1848, provoked the Orthodox Eastern Church to make answer, by an encyclical letter, showing distinctly and clearly the opposition of the principles of Rome to the traditional and Apostolic ones—the answer to which not only did not please, but also gave offence to his Holiness; and that his Holiness was really offended the counter reply from him clearly showed. And since his Holiness evidently will in no wise deviate from his own position, neither (by Divine grace) have we deviated from ours, we do not wish to occasion to him fresh offence to no purpose, nor can we endure to re-open old wounds and stir up again extinct hatreds by questions and disputings of words which end, for the most part, in breaches and ill-will—whereas rather either of us has need at this time, if ever, of evangelical and common love and sympathy, on account of the many and various dangers and trials which surround the Church of Christ. Nor, again, is any mutual understanding or discussion in Council possible unless there exist first the common basis of the same principles acknowledged by both. And further, our opinion is that the most successful and least irritating method of solving such questions is the historical method. Since it is manifest that there was a Church in existence ten centuries back which held the same doctrines in the East as in the West, in the Old as in the New Rome, let us each recur to that and see which of us has added aught, which has diminished aught therefrom; and let all that may have been added be struck off, if any there be, and wherever it be; and let all that has been diminished therefrom be restored, if any there be, and whatever it be; and then we shall all imperceptibly find ourselves united in the same symbol of Catholic Orthodoxy from which Rome, in the latter centuries ever strays further, while it takes pleasure in widening the breach by ever-new doctrines and decrees at variance with holy tradition.

'First Priest, Dom Testas.—'What opinions discordant with tradition does your Holiness intend?'

'The Patriarch.—'To omit details, we cannot (so long as the Church of the Saviour is on the earth) admit—that there is in the Universal Church of Christ any bishop, supreme ruler, and head other than the Lord; that there is any Patriarch infallible and unerring, speaking ex cathedra, and above Ecumenical Councils, in which latter is infallibility, when they are in accordance with Scripture and Apostolic tradition; that the Apostles were unequal (in contempt of the Holy Ghost, Who enlightened them all
"equally); or that this or that Patriarch or Pope had pre-eminen
c\of\ see, not by human and synodical arrangement, but (as you
"assert) by Divine right; and other similar points."

"The Fourth Priest.—'It is not proposed that Rome should
"change her principles.'

"The Second Priest.—Since the Council of Florence, having
"examined such points, united the two Churches, but still some
"individuals were left out of that union, these it is whom the Holy
"Father invites to the approaching OEcumenical Council, that these
"also may be perfectly united.'

"The Patriarch.—'None but an uneducated man (and your
"Reverence belongs not certainly to this class) can by possibility be
"ignorant how many things have been spoken and written against
"the Council of Florence. And immediately after the last Session
"of that compulsory assembly disputes arose, so that the forced
"union died in its swaddling-clothes. An assemblage collected on
"political grounds, on grounds purely of worldly interest, and which
"ended in a decision imposed for a time on some few of our Church
"by dint of starvation and every kind of violence and threat by him
"who was then Pope, such an assembly is not even worthy of the
"sacred name of Council. According to us, an OEcumenical Coun-
cil, an OEcumenical Church, and true Catholicity is, and is defined
"to be, that holy and undefiled body in which (independently of its
"material extent) the sum of the pure teaching of the Apostles is
"held, and the faith of the whole Church on earth, as it was estab-
"lished and thoroughly tried for the first eight centuries after the
"foundation of the Church, during which period the Fathers,
"both of the East and West, and the seven and only OEcumenical
"and most holy and inspired Councils, speak one and the same
"heavenly utterance of the Gospel. Let those Councils, and those
"reverend Fathers whose writings are familiar to all, be the safe
"and unerring guide of every Christian and bishop of the West who
"honestly longs and seeks for Gospel truth. They are the high-
est touchstone of Christian truth. They are the safe path on
"which we can meet with the holy kiss of unity of doctrine. But
"every one who travels outside of that path will be regarded by us
"as incapable of forming the centre around which to gather the
"members of the orthodox Catholic Church. But if haply any of
"the Western bishops have doubts regarding any of their doctrines,
"and wish to meet, let them meet and discuss them every day if
"they please. We have no such doubts regarding the traditional
"and unalterable doctrines of religion; and moreover, Reverend
"Fathers, it being a question of an OEcumenical Council, it surely
"does not escape your memory that the OEcumenical Councils were
"convened in other fashion than as his Holiness has convened this.
"If his Holiness the Pope of Rome had respect to Apostolic equality
"and brotherhood, it were fitting that (as an equal among equals in
point of dignity, but first by canonical right in rank of see) he should have directed a separate letter to each of the Patriarchs and Synods of the East, not that he should in encyclical and public form impose it, as though he were lord and master of all, but that as a brother to brethren equal in honour and station, he should ask them if, how, where, and under what conditions, they would agree to the assembling of a Holy Council. This being so, either do you too recur to history and the General Councils, in order that on historical grounds may be restored the much-longed-for true and Christian unity, or we will again content ourselves with continual prayers and supplications for the peace of the whole world, the security of the holy Churches of God, and the union of all Christendom; but in the present circumstances, we assure you, with sorrow, that we consider the convening of the Council vain and fruitless, as also this epistolary document which you have brought.'

"Fourth Priest.—‘Is prayer alone then able to restore unity? If a man is sick, even while we expect the healing to come from God, and for this end offer earnest prayers and supplications, yet we neglect not to provide for him a physician and remedies.'

"The Patriarch.—‘As we are speaking of religious and spiritual diseases, only the Omniscient Founder and Perfecter of His own Church, Christ the Lord, knows of a certainty who it is that is sick, how grievous the sickness is, what is the form of the disease, and what the corresponding remedy. Wherefore we again repeat, there is every need of prayer, fervent and unceasing prayer, to our Lord, who is love itself, that He will inspire all with love to God and every blessing of salvation.'

"Having thus spoken, his Holiness ordered the Protosyncellus (who had sat next him, and interpreted his words in French) to take the document from the desk, and give it back to the representative of Monsignore Brunoni, who had delivered it; and, so rising up, they made due reverence; and, having received a kind farewell from his Holiness, they left the room and departed, accompanied to the staircase by the Protosyncellus.'
INDEX.

A

bé de Mably, 86
bott (Lord Chief Justice), on Merchant Ships and Seamen, 110, 221
dication of Sovereign, Ambassador's Mission ended, 255
ysistia, war with England, 1868, 7
t, final, of the Congress of Vienna (1815),
t to Language of Treaties, 62	s of a Foreign State, Decision of British Courts as to Proof of, 124
mality, Court of, 269
ents employed by Governments, Status of, 246. See Ambassador. Provisional Consular, 284
quillon (le Duc d'), French Minister, Memoir of, on the Rights of Ambassadors, 223
sericus Gentilis. See Gentile xander VI., 317
gemeines Landrecht, &c., 232. Bür-nerliches Gesetz-buch, 231
iance, who may contract, 70
arnat, Use of, among States, 59
honso (King of Arragon), 354
bassador—
intiquity and Universality of his Rights, 148. Who may send, 149. Treaty between Turkey and Russia (1774), ib. Rights of States under Protection, ib. Of confederated States, collectively, individually, 150. Of Republic of Seven United Provinces, Embassy lodged in Assembly of States

Right to Receive, 168. Inherent in all States, ib. No Obligation to send or receive, 169. State bound to give Audience to Ambassador, ib. May refuse Ambassador sent for a mischievous Purpose, 170. Duly-commissioned Ambassador, ib. Cannot refuse Ambassador on the Ground of Sex, ib. Instance of Ambassadors, 171. State may refuse to receive one of its own Subjects as a foreign diplomatic Agent, ib. Exile appointed Ambassador to his own Country, 173. Criminal, ib. No Objection that Ambassador appointed is not a Native of the Country which sends, 174. Rank or Birth of Ambassador no Ground for Refusal, ib. State not bound to receive Papal Legate or Nuncio, armed with


Religion.—Ambassador's Right to exercise the Rites of his own Religion, 237. Language in which religious
Service to be performed, ib. By Chaplain in the Hotel of Ambassador, sanctioned by international Usage, on certain Conditions, ib. Protestant Chapels of Ambassador at Vienna ordered by Joseph II. to be closed, 238

**Different Classes of Public Ministers**, 239. Legates à latere distinct from Nuncios, 241, 440, 441, 442

**Ordinary and Extraordinary**, 242. May be accredited to various States at the same Time, 245. Power to negotiate with foreign States without Appointment to any particular State, 246. Cardinal Ambassador, double Allegiance of, 319. Where triable, 438, 439, 440

**Instructions.**—Letters of Credence.—Character of Ambassador recognised on production of them, 248. Rank of Minister changed, fresh Letters required, 249

**Arrival.**—**Audience**, 252. Audience with Sovereign may be public or private, ib. Letters of Credence delivered at, ib. When Diplomatic Agent of the second or third Class, 253; of the fourth Class, ib. Custom in republic States, ib. Alteration of Ceremonies by Sovereign of Foreign Court, 254

**Mission of**, 254. Custom on Recall of Ambassador, 256. Death of, 257

**America, North**

United States of. —Refuse to recognise the Blockade of Matamoros, 21. Decision in, as to Recognition of States, 35. Case in Supreme Court of, respecting Treaty of Peace with Great Britain, 118. Regulations as to Consuls put forth by, 292

Central and Southern.—Republics in, Members of the Community of States, 68

Dependencies.—**Jus legationis** granted to European Governors of, 157

Amiens, Peace of, 25

Anne, The, 270

Annuaire des Deux Mouches, 434, 444, 446, 458, 460

Antelope, The, 270

Autonelli, Cardinal, 445, 448

Appendix. Seé Contents of, at End of this Volume

Ariosto, Orland. Fur. 327

Arundel (Lord), Letter by, to Mr. Plumptre on the Bull "In Cœnā Domini," 371. Letter to, on Ditto, ib.

Apocrisarius, 189

Asylum, Ambassador's Hotel used as, 234

Austria, Recognition of Title of, in 1806, 39. Attempt of, to open the navigation of the Scheldt, 46. Reasons of withdrawing her Ambassador from Rome in 1814, 47. Treaty with Ottoman Porte for Equality of Rank, 58. Enactment of, as to Privileges of Ambassador, 234. Complaint of Emperor of, respecting Correspondence with French King as to German Princes in Alsace, being in French Language, 62. Guarantee of, that the Successors to British Throne after Death of Queen Anne should be Members of the Church of England, 85. Relations with Rome, 417. Emperor of, v. Day and Kossuth, 1861, 145

B

Bacon (Lord), 123

Bacon's (Matthew) Abridgment, 82

Baden, Treaty of (1714), 62

Baldwin's (American) Reports. See Reports

Balguerie, Affaire de la Maison, de Bordeaux contre le Gouvernement Espagnol, 137

Barbary, Ordonnances of France, respecting Consuls in, 292

Barbeyrac, 119, 121, 307

Barbuit, Case of, in Chancery, 304

Bartolus, 55

Bass (M. de), Case of, 202

Bavaria, Provisions of, as to Exemption of Ambassadors from ordinary Jurisdiction of Tribunals of, 231. Relations with Rome, 442

Belgians, Case of the Secretary of Legation of. See Drouet, M.

Belgium, Recognition of Independence, 28. Member of Community of States, 68. Separation of, from Holland, 88. Papers, Letters of Austria, Russia, Prussia, and England, respecting, 88

Bella, Coerunes, The, 270

Benedict XI., 360, 362

Bentineck (Lord George), Motion of, in the House of Commons respecting Debts due from foreign States, 11

Berlin, Treaty of, 76

Berne and Freiburg, Cantons of, *Pays de Vaud*, hypothecated to, by House of Savoy, 79

INDEX.

Bernard, M., 160
Berthold, Duke of Zahringen, 347
Beu, Baron von, 422
Bingham’s Reports, 35. Antiquities of the Christian Church, 328
Bishops, Powers of, 318
Blackstone, Commentaries, 55, 196, 228
Bluntschli, Droit international codifié, 1870, I. xi, 2, 43, 46, 129, 130, 134, 145, 262, 264, 269, 386
Bodinus, De Republicâ, 55
Boniface (St.), Abp. of Mayence, 334, —VIII, 345, 352, 360
Bosseuil, Declaratio Cleri Gallicani, 377
Botschafter, 239
Bougeant (Père), Histoire du Traité de Westphalie, 398
Bourbon, House of, 26
Bowyer’s Readings, 92, 360
Boyter’s Annals of Queen Anne, 228, 229
Bramhall’s Just Vindication, 328
Brazil, Regulations of, respecting Consuls, 292
Breslau, Treaty of, 76
Bristol, Bishop of, Pleni potentiary at Peace of Utrecht, 245
British Government. See Great Britain
Broom’s Legal Maxims, 89
Buckingham (Duke of), Libel against, by Inoysa and Colonna, Spanish Ambassadors, 201
Bull, In Cenâ Domini, 369, 370. Pastor Âternus, 399, 400
Bullæ Circunscriptionum, 450
Bullarii Romani Continuatio, S. Pontificum Clementis XIII., Clementis XIV, Pii V., &c., collegit And. Adv. Barberi, tom. 1—10., in 7 vols., folio. Rom.: 1833—45. Tom. 1, 2, 3, Clemens XIII.; tom. 4., Clemens XIV.; tom. 5—10., Pius V., 370
Bullarium Magnum Romanum, a B. Leone Magno, usque ad S. D. N. Benedictum XIII., cura et studio L. et A. M. Cherbini, editio novissima, juxta exemplar Romanum, 19 tom. in 16., folio. Luxemb.: 1727—58, 571
Burke, Tracts on Popery Laws, 472. Speech on Bill, for the Relief of Protestant Dissenters, 324
Burleigh (Lord), State Papers of, 153, 198, 200
Burrowes’s Reports. See Reports
Butler’s Historical Memoirs of the Roman Catholics, 474

C

Cabinet of seares and celebrated Tracts, 5, 86
Cadiz, Governor of, arrests Dutch Consul, 301
Cesar, De Bello Civili, 160
Cambray, Peace of.—League of, signed by Margaret of Austria in the name of Charles V., 171
Camden’s Elizabeth, 131, 135, 199, 200
Campo Formio, Peace of, 33
Canning (Mr.), Speeches of, 28. On the Independence of South America, 18, 19; on the Address of the King’s Speech on Opening of Session (1822), 23. Reply to Remonstrance of Spanish Minister on Recognition of South American Republics, 25. Administration of, 63
Canon Law. See Corpus Juris Canonici
Caraffa, Papal Legate; Henry II. of France absolved from Obligation of Oath by, 78
Cardinal Ambassador, double Allegiance of, 318, 493
Cardinals, 484—496
Caroline, The, 165
Cases (cited). See List at Commencement of this Volume.
Castile, Council of, 235
Castro (Gabriel Pereira de), 434
Cavour, Count, Note of, to Sardinian Minister at Berlin, 1860, 444
Cellamare, Case of, for Conspiracy, 296
Ceremonials, Maritime, 47
Chace (Judge of American Court), Opinion of, respecting the Construction of Treaty of Peace with Great Britain, 119
Chalcedon, Council of, 509
Chalmers, Collection of Opinions, 125
Charlemagne, 335
Chargés d’Affaires, Class of Ministers, 243. Ceremonials due to, &c. Their Letters of Credence, to whom addressed, 249. Arrival of, at foreign Court, notified to Minister for Foreign Affairs, 253
Charles I., 175
Charles II., Ambassador of, rejected by France, 152
Charles VI. (Emperor), 85
—— VIII. 382
Charles-le-Martel, 333
Chateau Cambresis, Peace of (1559), 77
China, Consuls in the five free Ports of, 315.
—— Powers of Ditto, ib.
Christian Countries, modern Consulates in, 263
Christina, ex-Queen of Sweden, 142
Chrysostom (St.), 318
Church, Connection with State, 321. Col-
Churches, Catholic, not in Communion with Rome—Greek, English, Scotch, Irish, Colonial, American, 464
Cicero, De Officis, 66, 95. De Finibus, 100.
Civilians, Opinions of, on certain Questions relating to Privileges of Ambassadors, 153. On Ambassador aiding in Treason against Sovereign to whom sent, 198
Civil Jurisdiction, Exemption of Ambassa-
dors from, in Countries to which accredited, 212
Clarendon (Lord), Remarks of, in House of Lords, as to Treaty between Austria and the Porte (July 22, 1823), 75
Clement V., 345, 362, 376
—— VI., 376
—— VII., 78
Clementine. See Corpus Juris Canonici
Clothaire, Constitution of, 340
De Commerce (French), 291
Coke's Reports, 469. See Reports
Coke (Lord), Institutes, 175, 196
Colletta, Storia del Reame di Napoli, 435
Collier's Ecclesiastical History of Great Britain, 343, 471, 472
Collision of Treaties, 121. See Treaties
Colonna (Spanish Ambassador), Case of, for Libel against Duke of Buckingham, 201
Colours, Orders of British Crown to Ships of War as to, 51. Penalty for hoisting prohibited Colours, ib. Case of the Mas-
ter of the Steamship, Lord of the Isles, for carrying illegal Colours, ib.
Comity, with respect to commorant For-
ereigners, 4
Comyns, 196
Concordata, German, 385. See Papacy, History of, 401
Concordat, of 1855, between Austria and Rome, 421; of 1859, censes 1870, between Rome and Spain, 429; of 1857, with Portugal, 434; with Wurttemburg, 1857, 460
Conscription of Debts due to British Sub-
jects by French Government, 13
Confirmation of Treaties, Modes of, 76
Congress of Vienna. See Vienna
Congresses, at which Sovereigns and Re-
presentatives have met, 54
Consolato del Mare, 259
Constantine, Church under, 326. Division of the Roman Empire by, into four Prefec-
tures, 327
Constantinople, English Ambassador at,
Case of, 202. Patriarch of, 327. Rela-
tions with Russian Church, 508
Consuls—
Historical Introduction, 258. Character and Functions imparted to, ib. Insti-
tution of Consulates, ib.
Modern Consulates in Christian Countries, 263. Entitled to special Protection, ib. Not entitled to Privileges, &c., of a Representative of State, 264. Not furnished with Credentials, except when also Chargés d'Affaires, ib. Amenable to criminal and civil Juris-
diction of foreign State, ib. Places of Worship in their House, rarely ac-
corded, 265. Arrest and Imprison-
ment of, 266. Case of Imprisonment of Mr. Pritchard, British Consul at Tahiti, by French Commandant, 267.
ports, ib. Fees of, Order as to, ib. Power given to, by the Statute, 12 & 13 Vict. c. 62, to facilitate Marriages of British Subjects, 285. Provisions relating to, and Vice-Con- 
suls, con-
tained in Merchant Seamen's Act (7 & 8 Vict. c. 112), ib. Ditto in Mer-
chant Shipping Act (17 & 18 Vict.
INDEX.

Consuls—continued
c. 194), ib. Instructions to, prepared by Board of Trade, ib. Regulations respecting, promulgated by foreign Powers for the Direction of their Subjects, ib.

Decisions of Municipal Tribunals as to Privileges of, 301. Arrest of the Dutch Consul by the Governor of Cadiz, ib. Claim of the Dutch for Privileges of Ambassador to their Consul at Genoa, refused by Senate, ib. Quarrel between Republic of Venice and Papal Government, on account of Outrages on Consuls of Republic, 302

(France) Decision of the Cour Royale de Paris (1833), in the Case of M. Carrier d’Abbaunza, Consul General of Uruguay, as to Exemption from Arrest, 302. Decision of the Cour Royale of Aix (1843) in the Case of M. Soller, 303

(United States of North America), Civil Tribunals of, promulgated same Doctrines as that of France in Case of M. Soller, 304

(England), Barbour’s Case in Chancery, Agent of Commerce from King of Prussia, Decision of Lord Chancellor as to Privilege from Arrest, 304–307.

Triguet and Others v. Bath.—Decision of Lord Mansfield (1764) as to Privileges of Secretary of Foreign Ambassador, 307

Heathfield v. Clifton.—Decision of Lord Mansfield (1767) as to Privileges of Ambassador’s Retinue, ib.

Clarke v. Creteco.—Decision of Sir J. Mansfield (1808), Claim of Defendant to Exemption from Arrest, as Consul-General from the Sublime Porte, 308

Vivash v. Becker.—Decision of Lord Ellenborough (1814), that a resident Merchant in London, who had been appointed and acted as Consul to the Duke of Oldenburg, was not privileged from Arrest, 309

Consul resident abroad, and Plaintiff in a Suit, considered by English Courts exempt from giving Security for Costs, 310

Tribunals of International Law.—Doctrine held by, 310. Case of the Indian Chief, Decision of Lord Stowell (Prize Court, 1800), Claim for Exemption of Cargo, Property of American Consul, from Rights of Belligerent, 310. Same Doctrine promulgated by Prize Courts in United States, ib.

Consuls in the Levant.—Status of Consuls in Mahometan Countries, 312. Jurisdiction of, ib. Statute of 6 & 7 Vict. c. 94, as to Jurisdiction of Her Majesty in Countries out of her Dominions, 313; in China, 315

Consuls, Vice. See Consuls

—— General. See Consuls

Convention between England, France, and Spain, 1861, 7, 21; as to Greece (30th April, 1843), 12; between Great Britain, King of the Netherlands, and Russia (19th May, 1815), 111. Ditto, Great Britain and Russia, 114. See Treaties

Coppi, Annali d’Italia, 405, 408

Correspondence respecting the Arrest of Mr. Harwood (the Vienna Correspondent of the Morning Chronicle), by Austrian Authorities, 3; respecting sinking of British vessels in the Seine, by Prussian troops, (1871) 7; between Viscount Palmerston, the Marquis of Normandy, and Prince Castelreaga (laid before Parliament, 1849), as to armed Intervention, 602. International Language in which written, 61. See Papers


PASSAGERS REFERRED TO.

Corpus Juris Canonici.

Decreti Primâ Pars.

Page

Dist. xv. c. i. s. 1. 336
" " xxii. c. i. 486
" " xxiv. c. iii. 486
" " xxv. c. vi. s. 1. 501
" " i. c. lviii. 501
" " lxi. c. xiii. 486
" " lxxi. c. v. 486
" " lxxiv. c. vi. 486
" " lxxix. c. iii. v. 486

Decretalium.

Lib. I. t. xxxiii. c. 6. (Solitæ) 349
" I. t. vi. c. 34. (Venerabilem) 348
" I. t. xxx. or, X., 1. i. 30. (De Off. Leg.) 496
" I. t. xxx. c. 8., or, c. viii.; X. (Ib.) 496
INDEX.

Dutch Consul arrested by the Governor of Cadiz, 301
Duties, Import, Exemption of Ambassador from, 232

E

Ebenders, Was ist ein Bischof? 419
Ecclesiastical Titles. See Titles
Edwards’s Admiralty Reports, 35. See Reports, List of
Elizabeth (Queen), Excommunication of, 471
Ellenborough (Lord), 145, 301, 309
Embassy, 148, 238
England, Commonwealth and Protectorate of, 25. See Great Britain
Enlistment (Foreign) Bill, Debate on, 35
Ensign. See Colours
Equality of States, Rights incident to, 1, 41
Eugensius IV., 377
Evans’s Translation of Pothier, 104
Evidence, Acts of foreign State only proved by an examined Copy on Oath, 124
Exmouth (Lord), Demand for Compensation from the Dey of Algiers for Injuries done to British Consul, 266
Exterritoriality, Rights to, by Sovereigns, 133. See Sovereigns. Of Ambassadors, 178, 212. See Ambassadors
Extravagantes. See Corpus Juris Canonici
Eybel, Was ist der Papst? 419

F

Farini, Lo Stato Romano, 484, 486
Felix V. (Pope), 377
Fénelon, 64
Ferdinand, of Arragon, 317
Ferreira (Pinheiro), 244, 246
Firmans, 507
Flag. See Colours
Flassan, 98, 141, 263
Fény, Hist. Eclés., 369
Florence, Council of (1439), 377, 304
Félix, 128, 148, 211, 229, 230, 231, 265, 310
Foreallini, Lexicon, 189
Foreign Enlistment Bill, Debate on, 35
Spiritual Powers, international Status of,

327. States, Acts of, how proved, 124. Relations of Papacy with, 401. See Papacy
Foreigners, their Right to Protection, 3. Difference between domiciled Foreigners and Visitors, 6
Fox (Charles James), Speech of, on the Russian Armament (1792), 64
Francis I., absolved from Obligation of Oath by the Papal Legate Caraffa, 78. Ambassadors of, to Venice and Constantinople, arrested and executed while passing through Milan, 209

—— II., 885
Francis II., King of the Two Sicilies, 28
Frankfort, Decree of Diet of (1338), 376
Franz et Elise, The, Case of, 269
Frederick I., of Prussia, Assumption of royal Title, 37. Secured Safety of Papal Legates, 190

—— II., 352
Friedrich (Dr. J.), 355, 399
Fuente La, Historia General de España, 429
Fynn’s British Consul abroad, 263, 265, 268, 272, 314, 315

G

Gaïus, 91
Gallison’s (American) Reports, 329. See Reports, List of
Garden (De), Traité de Diplomatie, 142, 193, 194, 195, 197
Gazette des Tribunaux, 187, 188, 219, 303
Gelston v. Hoyt, Case of, 35. See Cases, List of
Genoa, Claims of maritime Honours in the Ligurian Sea, 53. Dutch Consul at, Claims to ambassadorial Privileges for, refused by Senate, 301
INDEX.

antilles (Albericus), 110, 148, 182, 183, 185, 218

George II., 313

— III. Proclamation of, as to Flags and Colours carried by Ships, &c., 51. Right of sending Embassy, vested in Prince of Wales, during Incapacity of, 155, 313

— IV., Statute of (Year 6, c. 78), as to Powers of Consuls, 284

German Protestant States, Papal Relations with, 450

germany. Emperors of, Titles of, 36

ermon v. Cochran, 270

fannonie, Ist. de Napoli, 370, 435

fibbon’s Decline and Fall of the Roman Empire, 61, 504

fiesler, Lehrbuch der Kirchengeschichte, 389

fioberiti, Introduzione allo Studio della Filosofia, 426. Della Riform. Cattol. 367

ladstone v. Musurus Bey, 216

government, Debts of, 1.

garvan, Earl of, 73

gant (Sir Wm.), Judgment of, as to Debts of a State, 13

great Britain, Conflict between, and North American Colonies, 19. Her Refusal to recognise Republic of Ditto (1792), 25. Claims of maritime Honours in the narrow Seas, 53. Treaties with Holland as to maritime Honours, 54. Convention (1815) with the Netherlands and Russia, as to the Russo-Dutch Loan, 112. Convention with Russia (1831), as to ditto, 113. Treaty with Sweden (1866), forbidding the lending the Ships of the one to the Enemies of the other, 122. Powers entrusted by, to Consuls, 280. See Consuls. Ships of, Protection on board of, 282. Relations with Rome, 467, 482


seek Archbishop of Syra and Tenos, as to Communion with Anglican Church, 508
egory IX., 345

— the Great (Pope), 332, 449, 450

Decretals of. See Corpus Juris Canonici

Gronovius, 317

Grotius, De Jure Belli et Pacis, Passages cited from.

(Prolegomena.)

Page

Proleg. 31

Lib. I. t. iii. s. 13 317

" II. t. iii. 13 335

" II. t. xi. 64

" II. t. xi, 12, 13 76, 250

" II. t. xii. 64

" II. t. xiii. 64

" II. t. xiii. 1 77

" II. t. xv. 1 70

" II. t. xv. 5 64

" II. t. xv. 8-12 70

" II. t. xvi. 64, 89

" II. t. xvi. 1 90

" II. t. xvi. 10 119

" II. t. xvi. 13 96

" II. t. xvi. 20 98, 106

" II. t. xvi. 25, 6, 2 109

" II. t. xvi. 29 121

" II. t. xvii. 18, 19 71

" II. t. xviii. 43

" II. t. xviii. 1 179

" II. t. xviii. 2 159

" II. t. xviii. 3 169, 176

" II. t. xviii. 4-5, 127, 179, 196, 197

" II. t. xviii. 4-6 110

" II. t. xviii. 4, 7 197

" II. t. xviii. 5-1 210, 213

" II. t. xviii. 6 194

" II. t. xviii. 8, 2 235

" II. t. xviii. 9 193

" II. t. xviii. 10 155

" II. t. xx. 44, 3 282

" II. t. xx. 48 70

" II. t. xxii. 14 317, 318

" II. t. xxv. 3

" II. t. xxvi. 4-4 318

" III. t. ii. 1

" III. t. ii. 1, 2 14

" III. t. ii. 5 5

" III. t. ii. 7 6

" III. t. xx. 33 96

" III. t. xxxi. 16 255

De Imperio Summarum Potestatum circa Sacra, 321, 331

— Tract. de Leg. 331

Guarantee, Treaties of, 80. See Treaties

Guideckens (Col.), English Ambassador at Stockholm, 236

Guizot, 415

Gunther, 41, 58, 59, 79, 128

Gustavus Adolphus, 156

Gyllenborg (Swedish Ambassador), Case of, for Conspiracy, 203
INDEX.

H

Hagard's (Admiralty) Reports. See Reports, List of
Hale's Pleas of the Crown, 196, 205
Hallam's Constitutional History of England, 142
Hanau (Gazette de), 458
Hanover, Title of King of, recognised, 39. Treaty of (1725), between Great Britain and Prussia, 83. Relations with Rome, 453. Oath of Allegiance to be taken by Roman Catholic Bishops in, Form of, 454
Hanse Towns, Treaty with France (1716), as to Places of Worship in House of Consul, 265, 273
Haslang, Count (Bavarian Ambassador), Claims of Privileges by Persons, as Servants of, 221
Hegel, 33
Henry II., of France, 78
—— III., of Germany, 338, 354
—— IV., 338
—— VI., 347
—— VII., of England, 175
—— VIII., Excommunication of, 471
Hermann Delong, Case of, 303
—— of Luxemburg, 343
Herodotus, 192
Hertslet's Commercial Treaties, 67, 112, 236, 434
Hesse, Elector of, Refusal by five great Powers to recognize his Title of King, at Congress of Aix-la-Chapelle, 39
Hesse-Cassel (Landgrave of), Ambassador of Holland at Court of, accused of Mal-administration of a testamentary Trust, 195
—— Passport to Minister of, at France, Refused for Nonpayment of Debts, 223
Hilliger, 134
Hoey (M. Van), Case of, 204
Hoffmann, 75
Hohenlohe, Prince, Circular of, to the Bavarian ministers (1869), 443.
Holldernes (Earl of), English Ambassador to Venice, Arrest of, by Austrians, 203
Holstein, Duke of, Envoy Extraordinary of, 216
Hooker's Ecclesiastical Polity, 328, 358
Hostages, 78
Hotel of Ambassador, Inviolability of, 234. Use of, as an Asylum for Refugee Offenders, 235
Huber, 135
Hubertenburg, Treaty of, 76
Huberus, 177, 197
Huc (M.), Voyage dans le Thibet, 341
Hudson (Sir J.), 29
Hum (Mr.), Motion in House of Commons (1834), respecting Russo-Dutch Loan, 115

I

Ihering, Rudolph, 184
In Cenâ Domini (Papal Bull), 369. Papers relating to, 370
Income-Tax, Foreigners' Exemption from, through having share in Public Funds, 14
India, British Governor-General of, 157
Inglis v. Trustees of the Sailors' Snug Harbour, 219
Innocent III., 347
—— IV., Frederick II. deposed by, 352
Inoyosa and Colonna (Spanish Ambassadors), Case of, for Libel against the Duke of Buckingham, 201
Institutes. See Roman Law. Coke's, 175, 196
Insults to States, 43. To outward Insignia of States, 46. To Flag of Ditto, 46
Internuncio, what Class of Minister, 243
Interpretation of Treaties, 89. Seen Treaties Ireland, Union with. Proclamation of George III., with respect to Colours, to be carried by Merchantman of United Kingdom, 51
Israelites, Inviolability of Ambassadors acknowledged by, 183
Italian Government, Memorandum of, on Roman Question (1870), 417, 446. Statute of, respecting the Pope (1871), 60, 447
Italy, Kingdom of, 443, 449

J

James II., Recognition of Son of, resented by Great Britain, 25
Jarry (M.), le President, 138
Jenkins (Sir Leoline), Life of, 51, 54, 96
INDEX.

755

Jenkinson (Mr., afterwards Earl of Liverpool), Defence of the Conduct of Great Britain (in 1758), respecting the Protestant Succession to British Throne, 86 Jerusalem, Establishment of Bishopric of, 482, 483. Patriarch of, Letter to the Archbishop of Canterbury, 508 Jervis (Lord Chief Justice), Decision of, in the Case of M. Drouet (Belgian Minister), 224 John IV. (King of Portugal), Ambassador of, admitted by England, 153

— XXII. (Pope), 364 Joseph II, Emperor of Austria, 238, 339 Julius II., 60, 78, 317 Junius, Letters of, 42 Jurisdiction (Civil), of Her Majesty in Countries out of Her Dominions, 313

K

Kainardji, Treaty of 1774 between Turkey and Russia, 149 Kaltenborn, Grundsätze des Praktischen Europaischen Seerechts, 263 Kent, Commentaries of, 263, 280 Kent, Case of, 283 King (the) v. Benson, Case of. See Cases, List of.

Klinkhammer, 67

Klüber, 16, 36, 37, 41, 47, 59, 60, 61, 64, 69, 70, 71, 74, 75, 76, 78, 79, 82, 123, 131, 135, 148, 149, 150, 155, 178, 179, 193, 194, 197, 210, 215, 239, 240, 249, 245, 246, 250, 285, 319, 492

Knapp’s Privy Council Reports, 14


L


M


Manilla, The, Case of, 35 Mansfield (Lord), 221, 307, 308 Marca (Petrus de), de Concordantia Sacerdotii et Imperii sui de Libertatis Ecclesiae Gallicanae, 391 Maréché de Guebriant, sent to Poland to conduct the Princess des Gouzaques, 171 Maritime Ceremonials, 47. To whom paid, ib. What they consist of, ib. Who can claim them, 48. In open Sea, 49. Manner of paying by different ships, ib. Ordon-...
nance of King of France with respect to, 50. Regulations as to Colours, 51. British Merchant Vessels must Salute Ships of the Navy, 53. In particular Seas, distinguished from open Seas, ib. Claim of Venice to Maritime Honours in the Adriatic, 53; of Geneva in the Ligurian Sea, ib.; of France in Portion of the Mediterranean, ib.; of Denmark, with respect to Ships entering the Baltic, ib.; of Great Britain, with respect to Ships in the narrow Seas, 53. Treaties relating to, 54


Maurin (De) et De Cussey, 12, 28, 50, 54, 60, 61, 263, 271

Martin, V., 377

Martin (H.), Histoire de France, 407

Martin's (American) Reports, 119. See Reports, List of

Mason, Vindiciae Ecclesiae Anglicanae, 330

Matamoros, blockade of, 21

Maule (Mr. Justice), Decision of, in Case of M. Drouet (Belgian Minister), 226

Maximilian, Emperor of Mexico, 21

Mecklenburg (Duke of), Title of Grand Duke recognised, 39

Meisel, Cours de Stile Diplomat., 40

Mendoza (Spanish Ambassador), Case of, for Conspiracy, 199

Mensch (De), Manuel Pratique des Consuls, 292

Merchant Seamen's Act (7 and 8 Vic. c. 112). As to Consuls, 285. Shipping Act (17 and 18 Vic. c. 104), 52. As to Consuls, 285. Amending Acts (18 and 19 Vic. c. 91; 23 and 24 Vic. c. 98), 285

Merlin, 150, 152, 155, 156, 157, 158, 159, 170, 174, 175, 190, 210, 211, 215, 217, 230, 232, 234, 240, 241, 243, 254

Milan, Governor of, Ambassador appointed by, refused by Swiss Cantons, 257

Miles' (American) Reports. See Reports, List of

Milman (Dean), History of Latin Christianity, 340, 344, 368

Milititz, 258, 260, 261, 262

Minerva, The, 51

Ministers, Public, three Classes of, 60. Regulations for the Reception of, instituted by the United States of North America, in 1783, 61. Privileges of, see Ambassador, Different Classes of, 239. Class distinguished by ceremonial Honours, 243. Rank of, how determined, 245


Modern Consulates in Christian Countries, 263. See Consuls

Molesworth, Sir W., Speech of, on Cracow, 112

Monaldeschi, put to death by Christina, ex-Queen of Sweden, 142

Moniteur, the, 371

Montesquieu, De l'Esprit des Lois, 182, 197, 321, 326

Moser, Die Gesandten nach ihren Rechten und Pflichten, 245

Mühlenbruck, 59, 106

Müller's Fürstenbund, 344. Reichstagstheaterum unter Friedrich III, 385

Munich, Theological Faculty of, 443

Munro, President, Message of (December 1833), 19

Munster, Peace of (1648), 77. Privileges of Ambassadors waived at Congresses of, 219. Treaty of, Public Minister appointed by Spanish Ambassador to negotiate, 156

Muratori, Annali, 335

Muscovy, Ambassador of Peter the Great, Czar of, arrested in London for Debt, 228. Duke of, 450

N

Napoleon I, Emperor, Title of Recognition of, 39. Excommunication of, 412

III. Speech of, in French Chambers in 1860, 416. Letter of to M. Thouvenel (1862), 444


Neyron (F. J.), de Vi Fœderum, 74
INDEX.

Papacy, increase of, after Death of Charlemagne, 338. Roman Church under Constantine, 339. Decretals in the Corpus Juris Canonici, and Principles contained therein at variance with International Law, 547. International Status of, between the Period of Promulgation of the Canon Law and the Council of Trent, 375. Height of Papal Power, ib. Pragmatics and Pragmatic Sanctions, beginning of, 378. Concordata between the Roman See and Independent States, 378. International Relations of Rome with the Church of France, 389. Pragmatic of St. Louis, 382. German Concordata with the See of Rome, 385. The Council of Trent, and its Effect upon International Relations, 389. Rule as to Papal Infallibility (1870), 389. After the Treaty of Westphalia, 393. En-cyclic Quanta cura, 374, 393, 399. Vatican Council (1870), 374, 399, 416, 510. International Relations of, with foreign States in which a Roman Catholic Church is established, during Period of Reformation and present Time, 401. Relations of, with France, 401. Moni-torium di Parma, 408. Relations of, with Austria, 414; with Spain, 422; Portugal, 431; Two Sicilies, 434; Sardinia, 438; Tuscany, 441; Bavaria, 442. International Relations of, with foreign States in which a Protestant Church is established, 450; with Prussia and Hanover, 453; with German Protestant States, 455; with Saxony, 458; with Denmark, 460; with Sweden and Norway, ib.; with Wurttemburg, ib.; with Switzerland, 461. International Relations of, with States in which a Branch of the Catholic Church not in communication with Rome is established, 464. Relations of, with Russia, 465; the Forte, ib.; Greece, 466; England, 467. The Electors, Ministers, and Courts of the Pope considered in their Relation to foreign States, 464. England and Rome, 501. See Pope Papal Government, Quarrel with Republic of Venice (1364), on account of Outrages on Consuls of Republic, 302 Papers, Parliamentary:—Correspondence respecting Arrest of Mr. Harwood, Correspondent of Morning Chronicle, by the Austrian Authorities at Vienna (1852-3), laid before Parliament (1853), 3. Debates in Parliament on the Affairs of Greece and the Claims of Don Pacifico

Pacca (Cardinal), Memorie del, 412, 413, 414

Pacquin, Lehrbuch des Kirchenrechts, 324, 362, 367, 485

Palmerston (Lord), Circular of, respecting Debts of foreign States, 9. Reply of, to Lord G. Bentinck's Motion respecting British Bondholders, 11

Pando, 149, 159, 168, 177

Norfolk (Duke of), put to death for Conspiracy, 198

Napoleonic Wars, 460

Novelle of Justinian. See Roman Law

Nuncios, distinguished from Legates a latere, 242

O

Oath, once taken as a Security for Performance of Treaty, 77. Of Allegiance to be taken by Roman Catholic Bishops in Hanover, form of, 454

Oecumenical Councils, nature of, 354. Subdivision of, ib.

Oldenburgh, Duke of, title of, recognised, 39. Claim of Consul of (Becker), for Exemption from Arrest, 309

Oppenheim, 16, 33, 36, 213

Orleans (Duke of), Triple Alliance of La Haye (1717), negotiated by Cardinal Dubois, during Minority of, 155

— (Duchess of), Treaty between France and England negotiated by, 171

Otho (Prince), Treaty of Guarantee that Greece shall form a monarchical independent State, under Sovereignty of, 87

— the Great, 338, 347

Ottoman Porte, Treaty with Austria for Equality of Rank, 58. Ancient Maxim of, with respect to Language of Treaties, 63. Papal Relations with Rome, 411

Oxenstei'n (Chancellor), Government of Stockholm devolved upon, after Death of Gustavus Adolphus at Lutzen (1632); 156. Nominales Grotius as Ambassador to France, who was refused by Richelieu, 156

P

Piacenza, Treaties of, written in the Latin Language, 62

Nina, The, Case of, 269

Noodt, (Ger.), Dissert de Relig. ab Imperio, Jure Gentium libera, 319, 396, 397
INDEX.

Pritchard (Mr.), British Consul at Tahiti, Arrest of, by French Commandant, 267

Proclamations, insulting, Right of Redress for, 43

Property of Subjects liable to Debts of State, 14

Protection, Right of Citizens to, in foreign Countries, 3; on board British Ships to Refugees, 282

Protestant Succession in England, Treaties of Guarantee relating to, 81, 86. States (German), Relations with Rome, 455

Protocols in Papers laid before Parliament, 129

Provisoes, Statutes of, 467

Prussia, Enactments as to Privileges, &c., of Ambassadors, 231. Regulations as to Consuls put forth by, 292. Relations with Rome, 453. King of, accepts the title of Emperor of Germany (1871), 37. Letter of to Pius IX. 451

Putman, J. L. E., 61

Putter, 190

Puttlingen (De), 231

Pythagoras, 183

Q

Quadruple Alliance (1718), 62

Quanta cura (Papal Bull), 374, 393, 399

Quintilius, 97, 106, 121

R

Radstadt, Peace of, 62

Ranke, 334, 335, 412

Ratification of Treaty, 75

Ravenna, Archbishop of, 189, 339. Exarchate of, 335

Rayneval (De), Institut. de Droit de la Nature et des Gens, 319

Rechberger, Enchiridion Juris Ecclesiasticus Austriaci, 419

Recognition of States, 16. Occasion for its Application, 17. Of two kinds, virtual and formal, 18. Of Titles of Dignity, 37

Recréance, Lettres de, 256

Reiffenstuel, Jus Canon. Univ., 370


Report, Parliamentary. See Papers

Reports of Cases. See Lists of Reports at Beginning of this Volume

Republies (South American), Recognition of, by Great Britain, 27

—— (French), ib.

—— (great), their rank among States, 61

Responsales, 189

Revolution, French (1791), 68

Revue Étrangère, 231

Rhine, Confederation of, Assumption of new Titles by old Potentates, 39

Richard I., Captivity of, in Austria, 208

Richelieu (Governor of France), Refusal to receive Grotius as Ambassador to France, 156. Arrest of Elector Palatine by, 209

Rights incident to Equality of States. See Equality

Rio de la Plata, Treaty between, and Great Britain, 28

Ripperda (Duke of), Case of, 235

Robertson's (Ecclesiastical) Reports. See Reports

Robespierre, 326

Robinson's (Admiralty) Reports. See Reports

Robson v. The Huntress, 270

Rodolph, Emperor, 394

Rome, ancient, 184. When Christian Church planted, 326. Divided into four Prefectures by Constantine, 326. Pope of. See Papacy

Roman Catholics, Report from Committee on Regulation of, in foreign Countries, 407
Roman Law with respect to Ambassadors, 186
--- --- --- Passages referred to: --- Page

Digest, Lib. I. t. ii. 2 323
Lu. t. iii. 3 133
Lu. t. iii. 17 105
Lu. t. iii. 23 93
Lu. t. iii. 24 95
Lu. t. iii. 26 99
Lu. t. iii. 27, 28 99
Lu. t. iii. 29, 30 107
Lu. t. iii. 37, 38 93
Lu. t. vii. 1, 1 102
II. t. xiv. 1 pr. 65, 92
II. t. xiv. 5 69, 91
II. t. xiv. 27, 4 121
II. t. xiv. 39 104
II. t. xv. 9 118
II. t. xviii. 1 182
III. t. i. 1 s. 5 170
III. t. iv. 1 325
IV. t. i. 12 213
V. t. i. 22 217
V. t. i. 24, 26 182
V. t. i. 28 218
V. t. iii. 20, 6 96
V. t. iii. 23 96
VIII. t. ii. 23 102
X. t. iv. 19 105
XI. t. ii. 20 99
XIV. t. vi. 7, s. 3 108
XVI. t. i. 8, 14 108
XVIII. t. i. 21 104
XVIII. t. i. 33 104
XIX. t. ii. 15, s. 4 100
XIX. t. i. 18 100
XXIV. t. i. 5 108
XXIV. t. i. 52 100
XXVIII. t. i. 13, 2 105
XXVIII. t. i. 21 101
XXX. t. xxxix. 102
XXXII. t. i. 69 94
XXXIV. t. i. 218
XXXIV. t. ii. 218
XXXIV. t. iii. 218
XLIV. t. ii. 2 103
XLV. t. i. 38, 18 104
XLV. t. i. 80 99
XLVII. t. x. 18 45
XLVII. t. xxii. 325
L. t. i. 25 128
L. t. vii. 4 171
L. t. viii. 8 217
L. t. xvi. 17 187
L. t. xvi. 1 95
L. t. xvi. 6 105
L. t. xvi. 50 85

Roman Law (continued): Page

Digest, Lib. L t. xvi. 128 97
" " L. t. xvi. 195 102
" " L. t. xvi. 219 105
" " L. t. vii. 171
" " L. t. xvii. 34, 93, 100
" " L. t. xvii. 45 121
" " L. t. xvi. 67 100
" " L. t. xvii. 81 118
" " L. t. xvi. 114 93, 100
" " L. t. xvi. 172 104

Codex, Lib. I. t. ii. 19, 23, 25 325
" " I. t. iii. 35
" " I. t. xiv. 12 92
" " II. t. iii. 29 181
" " III. t. xxiix. 5 102
" " IV. t. lxxi. 8 233
" " IV. t. lxxii. 3-4 176
" " V. t. xiii. 102
" " IX. t. xxxv. 5 45
" " XI. t. xxix. 8

Institutes, Lib. IV. t. iv. 44
Novelt, Lib. VI. ce. ii. iii. 189
" " CVII. c. i. 101
" " CXXIII. c. xxv. xxxvi. 189, 498
" " CXXXI. c. i. 366

Ross, Bishop of. See Leslie
Rossi, Letter of Guizot to, 415
Royal Honours, 56
— — Navy, Ships of, Contempt in British
Merchant Vessels to pass without making required Salutes, 53
Raynaldus, 376
Roussel, Supplement, 78
Russell (Lord John), Letter to Sir J. Hud-
son, 29, 445. Speech of, Debates on
" Cracow," 112
Russia, Recognition of Peter the Great's Title
as Emperor, 37. Treaty with Denmark
with reference to maritime Honours, 54.
Claims, with France and Spain, Precedence
over other States, 58. Convention with
Great Britain and King of Netherlands
(1815), Russo-Dutch Loan, 111. Treaty
with Great Britain (1831) ditto, 114.
Enactment of, as to Disputes against
Members of Embassy, 231, Law as to
Privileges, &c., of Ambassadors, 231.
Regulations as to Consuls put forth by,
292, Relations with Rome, 465
Russian Church. See Constantinople
Russo-Dutch Loan, Conduct of Great
Britain with respect to the, 111. Conven-
tions entered into respecting, 111, 113.
Motion of Mr. Hume in the House of
Commons in 1847, respecting, 113. Ditto
of Lord Dudley Stuart in 1854, 117
INDEX.

Rutherford, 89, 90, 93, 94
Ryswick, Treaty of, 62, 78

S
Sa (Da), Brother of Portuguese Ambassador, case of, for Murder, 204
Salfeld, 36, 37, 263
Sail, Salutations by, 58
Samwer, Recueil de Traites, 506, 507
Sardinia, King of, Letter to Pius IX. (1860), 28, 444. Proclaimed King of Italy, 446. Relations with Rome, 438
Savigny, 89, 91, 101, 102, 104, 106, 126, 335, 340, 393
Savoy, House of, hypothecated the Pays de Vaud to the Cantons of Berne and Freyburg, 79
Saxony, Relations with Rome, 458
Scheidt, Attempt to open the Navigation of, by Emperor of Austria, 46
Schmalz, 36, 38, 72
Schmauss, 24, 59, 62, 77, 78, 80, 83, 84, 86, 265, 376, 434
Schoell, Archives Historiques et Politiques, 412
Schram, Institutiones Juris Ecclesiastic Publici et Privati, &c., 419
Schroeckh, J. M. Christliche Kirchengeschichte, 342, 387
Scots (Mary Queen of), Case of, 46, 143, 153, 187, 198, 245
Scott, Sir William, 122. See Stowell
Sea, Portion of, occupied by Flet, 48
Secretary of State, Approval of, necessary to the Appointment of Vice-Consuls, 283. Vice-Consuls cannot act without Sanction of, ib. Consul to transmit List of Vice-Consuls under him to, 284
Semiramis, H. M. S., Complaint against Master of the Nathe for passing without Saluting, 53
Senard, M., 417, 446
Sceua, 107.
Shakespeare, 350, 352
Simons' Reports. See Reports
Sismond de Sismondi, 441
Solon (M.), Case of, 138
Soller (M.) Case of, 303
Sophia (Princess), Succession to British Throne, 85
South American Republics, Mr. Canning's Reply to Spanish Minister on Recognition of, 23, 25
Southern Envoy's, seizure of, 160, 161


Spain: claims, with France and Russia, Precedence over other States, 58. Becomes Guarantee for Succession to British Throne, after Death of Queen Anne, 55. Proceedings against Ambassador of, in English Court, 224. Law of, as to Privileges, &c., of Ambassadors, 230. Regulations promulgated by, respecting Consuls, 291. Relations with Rome, 432

Spiritual Powers, foreign. See Papacy
Spttler, Geschichte des Papstthums, 359
Springer (Swedish Merchant), case of, 236
Stanhope (Lord), English Ambassador at Madrid, 235
Stanley (Lord), 21
State Papers, 27. See Papers

States, North American, Recognition of, by
### Statutes Referred To

<table>
<thead>
<tr>
<th>Statute</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Edw. III. St. 4</td>
<td>467</td>
</tr>
<tr>
<td>——— St. 5, c. 22</td>
<td>468</td>
</tr>
<tr>
<td>37 Edw. III. st. 1, c. 1</td>
<td>468</td>
</tr>
<tr>
<td>38 Edw. III. st. 2</td>
<td>468</td>
</tr>
<tr>
<td>13 Rich. II. st. 2, cc. 2, 3</td>
<td>468</td>
</tr>
<tr>
<td>16 Rich. II. c. 5</td>
<td>468</td>
</tr>
<tr>
<td>2 Hen. IV. c. 3</td>
<td>468</td>
</tr>
<tr>
<td>3 Hen. V. st. 2, c. 4</td>
<td>468</td>
</tr>
<tr>
<td>32 Hen. VI. c. 1 (Ireland) all</td>
<td>468</td>
</tr>
<tr>
<td>Statutes against Provisors in England and Ireland to be kept in force</td>
<td>468</td>
</tr>
<tr>
<td>2 Edw. IV. c. 3</td>
<td>468</td>
</tr>
<tr>
<td>7 Edw. IV. c. 2 (Against Bulls from Rome)</td>
<td>468</td>
</tr>
<tr>
<td>10 Hen. VIII. c. 5. (An Act against Provisors to Rome)</td>
<td>468</td>
</tr>
<tr>
<td>23 Hen. VIII. c. 20. (An Act restraining payment of Annuities to the See of Rome)</td>
<td>468</td>
</tr>
<tr>
<td>24 Hen. VIII. c. 12. (The great Statute forbidding Appeals to Rome, under Pain of Pramunire)</td>
<td>468</td>
</tr>
<tr>
<td>25 Hen. VIII. c. 20. (Act for Nonpayment of Firstfruits to the Bishop of Rome)</td>
<td>468</td>
</tr>
</tbody>
</table>

### Statutes Referred To (continued):

<table>
<thead>
<tr>
<th>Statute</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Hen. VIII. c. 21. (Concerning Peter's Pence and Dispensations)</td>
<td>468</td>
</tr>
<tr>
<td>28 Hen. VIII. c. 13. (Ireland.) An Act against the Authority of the Bishop of Rome</td>
<td>468</td>
</tr>
<tr>
<td>28 Hen. VIII. c. 16. (As to Dispensations and Licences herefore obtained from the See of Rome)</td>
<td>468</td>
</tr>
<tr>
<td>28 Hen. VIII. c. 19. (Ireland.) The Act of Faculties</td>
<td>468</td>
</tr>
<tr>
<td>1 Eliz. c. 1, s. 36</td>
<td>356</td>
</tr>
<tr>
<td>5 Eliz. c. 1</td>
<td>468</td>
</tr>
<tr>
<td>13 Eliz. c. 2</td>
<td>468</td>
</tr>
<tr>
<td>12 &amp; 13 Will. III. c. 2</td>
<td>86</td>
</tr>
<tr>
<td>7 Anne c. 12</td>
<td>220, 307</td>
</tr>
<tr>
<td>26 Geo. III. c. 84</td>
<td>482</td>
</tr>
<tr>
<td>55 Geo. III. c. 115</td>
<td>112</td>
</tr>
<tr>
<td>3 Geo. IV. c. 110</td>
<td>52</td>
</tr>
<tr>
<td>6 Geo. IV. c. 23</td>
<td>313</td>
</tr>
<tr>
<td>6 Geo. IV. c. 78</td>
<td>284</td>
</tr>
<tr>
<td>6 Geo. IV. c. 57</td>
<td>284, 316</td>
</tr>
<tr>
<td>6 Geo. IV. c. 108</td>
<td>52</td>
</tr>
<tr>
<td>2 &amp; 3 Will. IV. c. 81</td>
<td>112</td>
</tr>
<tr>
<td>3 &amp; 4 Will. IV. cc. 50, 53</td>
<td>52</td>
</tr>
<tr>
<td>4 Will. IV. c. 13</td>
<td>52</td>
</tr>
<tr>
<td>5 Vict. c. 6, s. 1</td>
<td>483</td>
</tr>
<tr>
<td>6 &amp; 7 Vict. c. 94</td>
<td>313</td>
</tr>
<tr>
<td>7 &amp; 8 Vict. c. 112</td>
<td>285</td>
</tr>
<tr>
<td>8 &amp; 9 Vict. c. 87, s. 10</td>
<td>52</td>
</tr>
<tr>
<td>11 &amp; 12 Vict. c. 108</td>
<td>473</td>
</tr>
<tr>
<td>12 &amp; 13 Vict. c. 62</td>
<td>285</td>
</tr>
<tr>
<td>13 &amp; 14 Vict. c. 3</td>
<td>236</td>
</tr>
<tr>
<td>14 &amp; 15 Vict. c. 60,</td>
<td>480</td>
</tr>
<tr>
<td>Repealed by 34 Vict.</td>
<td>480, 481</td>
</tr>
<tr>
<td>14 &amp; 15 Vict. c. 99</td>
<td>124</td>
</tr>
<tr>
<td>17 &amp; 18 Vict. c. 104</td>
<td>52, 285</td>
</tr>
<tr>
<td>18 &amp; 19 Vict. c. 42</td>
<td>284</td>
</tr>
<tr>
<td>18 &amp; 19 Vict. c. 91</td>
<td>285</td>
</tr>
<tr>
<td>23 &amp; 24 Vict. c. 98</td>
<td>285</td>
</tr>
<tr>
<td>34 Vict.</td>
<td>480, 481</td>
</tr>
</tbody>
</table>

- Stephen II. (Bishop of Rome), 334
- Stephens' (Blackstone), 197, 228
- Story, American Constitution, 89, 120, 173.
- On the Conflict of Laws, 13
- Stowell (Lord), Judgment of, in the Caroline, 162, 165; in the Indian Chief, 310, 311
- Strype, 143
- Stuart (Lord Dudley), Motion of, in House of Commons (1854), respecting Russo-Dutch Loan, 117
- Suarez, 89
- Suit of Ambassador, Exemption of, from Civil Jurisdiction of foreign country, 218
INDEX.

763

Sully (Duc de), French Ambassador, Case against one of Retinue of, for Murder, 300
Sweden, Treaty with England (1666), 122, Relations with Rome, 460
Switzerland, Alliance with France (1777), 78, Relations with Rome, 461
Syllabus, the, 374, 399, 416

T

Tahiti, Arrest of Mr. Pritchard, British Consul at, 266
Talbot (Lord Chancellor), Judgment of, in Barbaut’s Case, 305
Taparelli, P. Luigi, 328, 330, 331
Taxes, Exemption of Ambassador from, 232. See Income Tax
Ternaux (MM.) et Compagnie, Affaires de, contre la Republique d’Haiti, 137
Teschen, Treaty of, Guarantieship of Russia (1799), 76, 84
Tétot, Repertoire des Traité de Paix, 434, 507
Theodosius II., 332
Thomassinus, Vetus et Nova Eccles. Discipl., 483, 497
Thuanus, Histor. sui Temporis, 370, 389, 392
Thurloe’s State Papers, 202
Tindal, 203
Titles of Dignity, Recognition of, by States, 36. Assumption of new, 36. Right of States to confer, 45. Ecclesiastical, an Act to prevent the Assumption of, in Great Britain, 480

Guarantee.—That a State shall maintain a particular Status towards other Powers, 80. That it shall do a particular Act, 81. To defend the particular Constitution or Rights of a Country, ib. To defend a particular Constitution or Territory generally against all Attacks, foreign or domestic, ib. Of France, Sweden, &c., at the Peace of Westphalia (1648), 82. Ditto confirmed by Treaty of Hanover (1725) between Great Britain and Prussia, 83. Austria and Prussia’s Intervention (1792) in the War of French Revolution, ib. Of France and Russia for Succession to the Kingdom of Bavaria by Treaty of Teschen (1779), 84. Between Austria and Spain, &c., as to Succession to Throne of Austria, commonly called the Pragmatic Sanction, ib. Of the Great European Powers, with reference to the Duchies of Denmark, 85. For the Succession to the British Throne after Death of Queen Anne, ib. Of France, Great Britain, Russia, and Bavaria concerning Greece, 87. As to the Separation of Holland and Belgium, 88

Interpretation of, 89. What is meant by Interpretation, 90. Distinction between Laws and Covenants or Treaties, 91. Interpretation, authentic, 92. Usual, 93. Doctrinal, ib. Grammatical, ib. Literal, 94. Construction of Words, ib. To be drawn from Consideration of the whole Instrument, 95. Different Meanings to same Term in a Treaty, 96. Technical Words to be construed according to technical Meaning, 96. Doubt as to Intention by Uncertainty or Impropriety of Lan-
INDEX.

Treaties

Interpretation of—continued


Collision of,—Rules regarding, 121. Stipulation permissive yields to one that commands, ib. Ditto, to be performed at any time yields to one to be performed forthwith, 121. Prohibitory Stipulation preferred over one which is imperative, 122. Particular has Precedence over general Stipulation, ib. Prohibition with Penalty attached, Preference over that which has not, ib. Rule derived from Consideration of Dates of Treaties, 123. More considerable of two Duties to have Preference, ib. Effect of War and subsequent Peace upon existing Treaties, 125. Cases decided in the British and American Courts, involving the Construction and Interpretation of Treaties, ib.


Trent, Council of, International Status of Papacy between Period of the Promulgation of the Canon Law and, 375. Period of, and its effect upon International Relations, 389-395
Trent, the, Case of, 21, 160, 162
Tribunal Civil de la Seine, 302
Turkey, European, her Claim to Rights as Member of the Community of Nations, 68
Tuscany, Relations with Rome, 441
Twiss (Dr.), Duchies of Schleswig and Holstein, 82, 85. Law of Nations, 172.
Letters, 474
Two Sicilies (The), Treaty with Holland (1753), 272. Relations with Rome, 435

U
Ulpian, 66
United Netherlands, Recognition of Republic of, by Spain, 24
— States, Laws of, as to Consuls. See Consuls
Universities of Europe, Expositors of International Law, 358
Utrecht, Treaty of (1713), 62, 68, 97. Bishop of Bristol, Plenipotentiary at Peace of, 245

V
Valarino v. Thompson, 270
Valentinian III., 332, 397
Valin, 263
Van Espen, 418
Van Hoey (M.), Dutch Ambassador at France, Case of, 204
Vatican Council (1870), 374, 399, 416, 510
Vattel, 1, 3, 4, 8, 16, 36, 37, 40, 41, 43, 45, 46, 47, 55, 56, 57, 64, 66, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 82, 90, 94, 95, 104, 106, 109, 117, 119, 120, 123, 127, 148, 149, 150, 152, 156, 156, 169, 175, 176, 175, 179, 180, 181, 194, 196, 209, 214, 215, 218, 219, 234, 240, 242, 243, 244, 246, 247, 248, 249, 254, 262, 264, 271, 301, 319. American edition of, 311
Venerablem (Decretal), 348. See Corpus Juris Canonici.
Venice, Claims of, to maritime Honours in the Adriatic, 53. Republic of, Quarrel with Papal Government (1364), on account of Outrages on Consuls of Republic, 302
Verona, Congress at (in 1825), 55
Vesey's Reports. See Reports, List of Vesey and Beames' Reports. Ditto
Vice-Consuls. See Consuls
Viceroy possesses Right of Embassy, 156
Vienna, Congress of, Recognition of Titles at, 39. Treaty of (1725 and 1738), 62. Treaty of (1815), 68. Treaty of between Austria and Spain (1725), 84. Act of (9th June, 1815), 141. Congress of (1815), 240, 245
Virg. Aes., 322
Voltaire, Essai sur les Mœurs et l’Esprit des Nations, 354
Von Houtheim, de Statu Ecclesiae et legitima Potestate Romana, 419

W
Wachsmuth, 183
Wagner, case of, 35, 144
Walter's Kirchenrecht, 326, 350, 362, 366, 450
War, Law of Nations, 148, 158, 175, 190, 196, 197, 199, 206, 209, 240, 353, 354
Warnkönig, Rechtsphilosophie, 69. Inst. Juris Romani Privati, 925
Washington's (American) Reports. See Reports, List of Washington, Treaty of. See Preface
Weimar (Duke of), 39
Wellesley (Lord), Speech in the House of Lords on the Motion for a Committee to inquire into the State of the Laws affecting Roman Catholics (April, 1812), 322
Whitworth (Mr.), 229
Wicquefort, 148, 156, 174, 175, 182, 187, 196, 202, 209, 219, 234, 237, 246, 263, 301, 302, 307
Wildman, 89, 97, 98, 148, 263
Woff, 94
Wortley (Mr. Stuart), Speech of, in Debates on Cracow, 112
Wrench (Baron de), Case of, 223
INDEX.

Wurtemburg, Relations with Rome, 460
Worth, Mr., Case of, 5

Z

Zacharia, 80, 388

Zeá (M.), Spanish Minister, Reply of Mr. Canning to the Remonstrance of, respecting Recognition of South American Republics by Great Britain, 26
Zouch, 49, 128, 131, 148, 157, 159, 169, 170, 196, 199, 205, 211, 324

END OF THE SECOND VOLUME.

LONDON: PRINTED BY SPOTTISWOODE AND CO., NEW-STREET SQUAIRM AND PARLIAMENT STREET

Mr. Serjeant Stephen's Blackstone's Commentaries.—Sixth Edition.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, partly Founded on BLACKSTONE. Prepared for the Press by JAMES STEPHEN, LL.D., of the Middle Temple, Barrister-at-Law, late Professor of English Law and Jurisprudence at King's College, London, and formerly Recorder of Poole.

"It would be impossible, without entering minutely into details, to notice at any length this most valuable work. It is one which cannot be too highly recommended, not only to the profession but to the general public. It is a great mistake to act upon the notion that the study of the law is a matter of interest to lawyers only. Now there is no work which gives a summary of the English law at once so exhaustive and intelligible to the general reader as this publication of Dr. Stephen. He has incorporated into it all those portions of Blackstone's great work which would at the present day be useful to the reader."—Law Magazine.

"To redeem Blackstone from oblivion, it became necessary that his work should be edited by a lawyer as able and a scholar as graceful as Blackstone himself. Mr. Serjeant Stephen, more than twenty years ago, conceived the happy thought of introducing into the necessary alterations into the text itself, and, as he says in his preface, "interweave his own composition with as freely as the purpose of general improvement it might seem to require." The first edition was favorably received, acknowledged at once as an able reproduction of an invaluable treatise on English law, and has since passed rapidly through successive editions, till it has become the acknowledged students' text-book, and is accepted by the critics as a standard work."—Law Journal.

"This new edition of the well known Stephen's Commentaries deserves a cordial welcome, for few years have been more eventful in legislation than those which have passed since the publication of the fifth edition. We very sincerely recommend this standard text-book to all members of the profession. To the student it is simply invaluable, but it is also a useful companion to the most experienced lawyer."—Solictors' Journal.

"The popular notion of the study of law is, that it is dry. No person who reads these Commentaries will call it so. It is a fascinating book. After six editions, it is impossible to say anything new of a standard work like this. We can but repeat that Stephen's Blackstone is indispensable, not to the law student alone, but to all who take part in public affairs."—Law Times.

Questions on Stephen's Blackstone.

Svo. 10s. ed. cloth.

QUESTIONS FOR LAW STUDENTS ON THE SIXTH EDITION OF MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, By JAMES STEPHEN, LL.D., of the Middle Temple, Barrister-at-Law.


One very thick volume, Svo. 35s. cloth.


Sir Thomas Erskine May deserves the best thanks of all who are interested in parliamentary proceedings, for the care and attention he has bestowed in preparing this edition of his valuable work."—Law Magazine.

"We hail with satisfaction a new edition of this admirable work. The politician, the lawyer, the parliamentary agent, and the educated gentleman, will find here a teacher, a guide, a digest of practice and a pleasing companion."—Law Journal.

"Six editions in twenty-four years attest the estimation in which this great work is held by the members of successive parliaments, by the promoters of private bills, and by constitutional lawyers. It is an exhaustive treatise on that most lawless of all the law the Law of Parliament."—Law Times.

"Perhaps no work has achieved a greater reputation among lawyers than May's "Parliamentary Practice." The work is too well-known to need the repetition of any description of its scope."—Solictors' Journal.

Ortolan's Roman Law, Translated by Prichard and Nasmith.


"We are extremely glad to welcome the appearance of a translation of any of the works of Mr. Ortolan, and the history and generalisation of Roman law, which are now presented to us in English, are perhaps the most useful books that could be offered to the profession to students of the Roman law. The utility of Roman Law, as an instrument of legal education, is now generally admitted. The English of the book is unusually free from foreign idioms which so often disfigure translations. The book itself we strongly recommend to all who are interested in Roman law, jurisprudence, or history, and who are not sufficiently familiar with French to be able to read the original with ease."—Solictors' Journal.
THE PRACTICE OF THE HIGH COURT OF ADMIRALTY
OF ENGLAND: also the Practice of the Privy Council in Admiralty Appeals, with Forms and Bills of Costs. By HENRY CHARLES COOTE, F.S.A., one of the Examiners of the High Court of Admiralty. Second Edition, almost entirely re-written, with the County Courts Jurisdiction and Practice in Admiralty.

"* This work contains every Common Form in use by the Practitioner in Admiralty, as well as every description of Bill of Costs in that Court, a feature possessed by no other work on the Practice in Admiralty.

Mr. Coote, being an Examiner of the Court, may be considered as an authoritative exponent of the points of which he treats. His treatise is, substantially considered, everything that can be desired to the practitioner."

—Law Magazine.

The book before us is a second and enlarged edition of a work on the Practice of the Admiralty Court, written by the author some ten years ago. It is, however, a great improvement on its predecessor, being much fuller and more systematically arranged, and containing greater facilities for reference. Altogether Mr. Coote has done his work very carefully and completely, and we think his labours will be duly appreciated by Admiralty practitioners. —Solicitors’ Journal.

Mr. Coote has the great advantage of experience; he has long been a practitioner in the Court as a proctor; he is consequently familiar with those minutiae of practice which mark the distinction between the student and the practical man. Mr. Coote is a successful writer upon the Practice of the Probate and the Admiralty Courts. His book on the former has reached a fifth edition, and the volume before us is a second edition. —Law Times.

Cutler’s Law of Naturalisation.
12mo. 3s. 6d. cloth,


Mr. Cutler, in the work before us, lucidly explains the state of the law previous to the recent statute, and shows the alterations produced by it, so that a careful perusal of this book will enable the reader fully to comprehend the present state of the law upon this most important subject.”—Justice of the Peace.

‘To anyone not having much previous acquaintance with the subject, who wishes for a general sketch of the law affecting aliens, as it was, and as it is now, this book will be useful.’ —Solicitors’ Journal.

‘It has been carefully compiled, and the authorities referred to are accurately cited.’—Full Mail Gazette.

Lushington’s Naval Prize Law.
Royal 8vo. 10s. 6d. cloth,

A MANUAL OF NAVAL PRIZE LAW. By GODFREY LUSHINGTON, of the Inner Temple, Esq., Barrister-at-Law.

Hertslet’s Commercial Treaties.
Vols. 1 to 11, 8vo. £12 15s. boards,

A COMPLETE COLLECTION OF THE TREATIES AND CONVENTIONS, AND RECIPROCAL REGULATIONS, AT PRESENT SUBSISTING BETWEEN GREAT BRITAIN AND FOREIGN POWERS. By LEWIS HERTSLET, Esq., late Librarian and Keeper of the Papers, Foreign Office.

Post 8vo. 5s. cloth,

MOSELEY’S LAW OF CONTRABAND OF WAR; comprising all the American and English Authorities on the Subject. By JOSEPH MOSELEY, Esq., B.C.L., Barrister-at-Law.

8vo. 10s. cloth,

DR. DEANE’S LAW OF BLOCKADE, as contained in the Judgments of Dr. Lushington and the Cases on Blockade decided during 1854. By J. F. DEANE, D.C.L., Advocate in Doctors’ Commons.
A Catalogue

of

Law Works

Published by

Messrs. Butterworth,

Law Booksellers and Publishers

To the Queen's Most Excellent Majesty

And to

H. R. H. The Prince of Wales.

"Now for the Laws of England (if I shall speak my opinion of them without partiality either to my profession or country), for the matter and nature of them, I hold them wise, just and moderate laws: they give to God, they give to Cesar, they give to the subject what appertaineth. It is true they are as mixt as our language, compounded of British, Saxon, Danish, Norman customs. And surely as our language is thereby so much the richer, our laws are likewise by that mixture the more complete."—Lord Bacon.

1871.

7, Fleet Street, London, E.C.
### Index to Catalogue.

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abridgment</td>
<td></td>
</tr>
<tr>
<td>Peterdoff</td>
<td>28</td>
</tr>
<tr>
<td>Accounts</td>
<td></td>
</tr>
<tr>
<td>Solicitors, Coombs</td>
<td>27</td>
</tr>
<tr>
<td>Law of Pulling</td>
<td>36</td>
</tr>
<tr>
<td>Actions at Law</td>
<td></td>
</tr>
<tr>
<td>Browne</td>
<td>38</td>
</tr>
<tr>
<td>Kerr</td>
<td>17</td>
</tr>
<tr>
<td>Lush</td>
<td>13</td>
</tr>
<tr>
<td>Williams</td>
<td>33</td>
</tr>
<tr>
<td>Admiralty</td>
<td></td>
</tr>
<tr>
<td>Practice, Cootes</td>
<td>9</td>
</tr>
<tr>
<td>Prize Law, Lushington</td>
<td>27</td>
</tr>
<tr>
<td>Aliens</td>
<td></td>
</tr>
<tr>
<td>Cutler</td>
<td>11</td>
</tr>
<tr>
<td>Arbitrations (Masters and Workmen)</td>
<td></td>
</tr>
<tr>
<td>Lovesey</td>
<td>27</td>
</tr>
<tr>
<td>Articled Clerk</td>
<td></td>
</tr>
<tr>
<td>Examination Journal 5, 89</td>
<td></td>
</tr>
<tr>
<td>Handy Book, Mosely</td>
<td>21</td>
</tr>
<tr>
<td>Student's Guide</td>
<td></td>
</tr>
<tr>
<td>Benham</td>
<td>17</td>
</tr>
<tr>
<td>Attachment</td>
<td></td>
</tr>
<tr>
<td>Foreign, Brandon</td>
<td>23</td>
</tr>
<tr>
<td>Australia, Towns</td>
<td>35</td>
</tr>
<tr>
<td>Banking</td>
<td></td>
</tr>
<tr>
<td>Grant</td>
<td>26</td>
</tr>
<tr>
<td>Keyser</td>
<td>37</td>
</tr>
<tr>
<td>Bankruptcy, Bulley &amp; Bund</td>
<td>27</td>
</tr>
<tr>
<td>Linklater</td>
<td>36</td>
</tr>
<tr>
<td>Robson</td>
<td>29</td>
</tr>
<tr>
<td>Bar</td>
<td></td>
</tr>
<tr>
<td>Pearce</td>
<td>35</td>
</tr>
<tr>
<td>Smith</td>
<td>24</td>
</tr>
<tr>
<td>Barbados, Law of</td>
<td>35</td>
</tr>
<tr>
<td>Belligerents, Hamel</td>
<td>35</td>
</tr>
<tr>
<td>Philimore</td>
<td>19</td>
</tr>
<tr>
<td>Bills of Exchange, Grant</td>
<td>26</td>
</tr>
<tr>
<td>Blackstone, Stephen's</td>
<td>4</td>
</tr>
<tr>
<td>Blockade, Deane</td>
<td>36</td>
</tr>
<tr>
<td>Bookkeeping, Solicitors', Coombs</td>
<td></td>
</tr>
<tr>
<td>Carriers, Island, Powell</td>
<td>34</td>
</tr>
<tr>
<td>Railway, Shelford</td>
<td>25</td>
</tr>
<tr>
<td>Chamber Practice, Common Law, Parkinson</td>
<td>26</td>
</tr>
<tr>
<td>Chancery Practice, Goldsmith</td>
<td>6</td>
</tr>
<tr>
<td>Hunter</td>
<td>16</td>
</tr>
<tr>
<td>Drafting, Lewis</td>
<td>16</td>
</tr>
<tr>
<td>Channel Islands, Bowditch</td>
<td>36</td>
</tr>
<tr>
<td>Charitable Trusts, Tudor</td>
<td>18</td>
</tr>
<tr>
<td>Church Building, Trower</td>
<td></td>
</tr>
<tr>
<td>Civil Law, Tomkins and Jencken's</td>
<td>18</td>
</tr>
<tr>
<td>Civil Service Exam. (Indian), Cutler</td>
<td>35</td>
</tr>
<tr>
<td>Circumstantial Evidence, Wills</td>
<td></td>
</tr>
<tr>
<td>Code, English Law</td>
<td></td>
</tr>
<tr>
<td>Blackland</td>
<td>37</td>
</tr>
<tr>
<td>Colliers, Bainsbridge</td>
<td>33</td>
</tr>
<tr>
<td>Colonial Law, Barbados</td>
<td>35</td>
</tr>
<tr>
<td>South Australia</td>
<td>35</td>
</tr>
<tr>
<td>Commentaries, Stephen's Blackstone's</td>
<td>4</td>
</tr>
<tr>
<td>Commercial Law</td>
<td></td>
</tr>
<tr>
<td>Law, Chitty</td>
<td>37</td>
</tr>
<tr>
<td>Treatises, Hartelet</td>
<td>37</td>
</tr>
<tr>
<td>Forms, Crab</td>
<td>20</td>
</tr>
<tr>
<td>Common Form Practice, Cootes</td>
<td></td>
</tr>
<tr>
<td>Common Law, Abridgment, Peterdoff</td>
<td>28</td>
</tr>
<tr>
<td>At Chambers, Parkinson</td>
<td></td>
</tr>
<tr>
<td>Costs, Gray</td>
<td>35</td>
</tr>
<tr>
<td>Pleading</td>
<td></td>
</tr>
<tr>
<td>Chitty, jun.</td>
<td>22</td>
</tr>
<tr>
<td>Greeneal</td>
<td>36</td>
</tr>
<tr>
<td>Williams</td>
<td>33</td>
</tr>
<tr>
<td>Practice, Dixon</td>
<td>13</td>
</tr>
<tr>
<td>Kerr</td>
<td>17</td>
</tr>
<tr>
<td>Lush</td>
<td>13</td>
</tr>
<tr>
<td>Compensation, Law of, Ingram</td>
<td>11</td>
</tr>
<tr>
<td>Shelford</td>
<td>25</td>
</tr>
<tr>
<td>Consolidation Acts, Shelford</td>
<td>25</td>
</tr>
<tr>
<td>Constitution, May</td>
<td>29</td>
</tr>
<tr>
<td>Stephen</td>
<td>4</td>
</tr>
<tr>
<td>Commander of War, Deane</td>
<td>36</td>
</tr>
<tr>
<td>Moseley</td>
<td>36</td>
</tr>
<tr>
<td>Contracts, Specific Performance, Fry</td>
<td>30</td>
</tr>
<tr>
<td>Conveyancing, Introduction to Lewis</td>
<td></td>
</tr>
<tr>
<td>Practice, Barry</td>
<td>15</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Smith</td>
<td>21</td>
</tr>
<tr>
<td>Tudor</td>
<td>17</td>
</tr>
<tr>
<td>Forms, Christie</td>
<td>20</td>
</tr>
<tr>
<td>Crab</td>
<td>20</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Shelford</td>
<td>20</td>
</tr>
<tr>
<td>Convictions (Summary), Synopsis of, Oke</td>
<td></td>
</tr>
<tr>
<td>Forms, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Co-operative Societies, Brabrook</td>
<td>12</td>
</tr>
<tr>
<td>Copyholds, Enfranchisement, House</td>
<td>21</td>
</tr>
<tr>
<td>Law of, Scriven</td>
<td>23</td>
</tr>
<tr>
<td>Coroner</td>
<td></td>
</tr>
<tr>
<td>Baker</td>
<td>36</td>
</tr>
<tr>
<td>Corporations, In General, Grant</td>
<td>22</td>
</tr>
<tr>
<td>Municipal, Sewell</td>
<td>37</td>
</tr>
<tr>
<td>Costs, Low of, Gray</td>
<td>35</td>
</tr>
<tr>
<td>County Courts, Davis</td>
<td>6</td>
</tr>
<tr>
<td>Criminal Law, Davi</td>
<td>34</td>
</tr>
<tr>
<td>Oke</td>
<td>24</td>
</tr>
<tr>
<td>Curates, Field</td>
<td>28</td>
</tr>
<tr>
<td>Customs, Hamel</td>
<td>39</td>
</tr>
<tr>
<td>Deeds, Tudor</td>
<td>17</td>
</tr>
<tr>
<td>Descentts, Pearne</td>
<td>27</td>
</tr>
<tr>
<td>Divorce, Practice, Browning</td>
<td>23</td>
</tr>
<tr>
<td>Drainage, Woolrych</td>
<td>22</td>
</tr>
<tr>
<td>Easements, Latham</td>
<td>18</td>
</tr>
<tr>
<td>Washburn</td>
<td>36</td>
</tr>
<tr>
<td>English, Laws of, Blackstone</td>
<td>4</td>
</tr>
<tr>
<td>Faneillon</td>
<td>35</td>
</tr>
<tr>
<td>Stephen</td>
<td>4</td>
</tr>
<tr>
<td>English Bar, Pearce</td>
<td>35</td>
</tr>
<tr>
<td>Smith</td>
<td>34</td>
</tr>
<tr>
<td>Equity, Doctrine and Practice of, Goldsmith</td>
<td>6</td>
</tr>
<tr>
<td>Draftsmen, Lewis</td>
<td>16</td>
</tr>
<tr>
<td>Pleader, Drewry</td>
<td>29</td>
</tr>
<tr>
<td>Sut in, Hunter</td>
<td>18</td>
</tr>
<tr>
<td>See Chancery</td>
<td></td>
</tr>
<tr>
<td>Evidence, Circumstantial, Wills</td>
<td>31</td>
</tr>
<tr>
<td>County Court, Davis</td>
<td>6</td>
</tr>
<tr>
<td>Law of, Powell</td>
<td>32</td>
</tr>
<tr>
<td>Wills, Wigram</td>
<td>33</td>
</tr>
<tr>
<td>Examinations, Preliminary, Benham</td>
<td>17</td>
</tr>
<tr>
<td>Journal, Intermediate and Final, Mosely</td>
<td>21</td>
</tr>
<tr>
<td>Fences, Hunt</td>
<td>10</td>
</tr>
<tr>
<td>Fisheries, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Fixtures, Brown</td>
<td>14</td>
</tr>
<tr>
<td>Foreshores, Hunt</td>
<td>10</td>
</tr>
<tr>
<td>Williams v. Nicholson</td>
<td>35</td>
</tr>
<tr>
<td>Forms,</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Conveyancing, Crabbe...</td>
<td>20</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Magisterial, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Pleading, Greening</td>
<td>36</td>
</tr>
<tr>
<td>Probate, Chadwick</td>
<td>26</td>
</tr>
<tr>
<td>Friendly Societies.</td>
<td></td>
</tr>
<tr>
<td>Brabrook</td>
<td>12</td>
</tr>
<tr>
<td>Gauis' Roman Law</td>
<td>19</td>
</tr>
<tr>
<td>Game Laws, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Gaming, Edwards</td>
<td>37</td>
</tr>
<tr>
<td>Gas Companies Acts.</td>
<td>25</td>
</tr>
<tr>
<td>Gavelkind, Robinson</td>
<td>37</td>
</tr>
<tr>
<td>Guernsey (Law of)</td>
<td></td>
</tr>
<tr>
<td>Bowditch</td>
<td>36</td>
</tr>
<tr>
<td>Highways, Glen</td>
<td>30</td>
</tr>
<tr>
<td>House of Lords, Practice, May</td>
<td>29</td>
</tr>
<tr>
<td>Digested Index to Cases, Clark</td>
<td>15</td>
</tr>
<tr>
<td>Idiots, Phillips</td>
<td>30</td>
</tr>
<tr>
<td>Indian Penal Code</td>
<td></td>
</tr>
<tr>
<td>Cutter and Griffin</td>
<td>34</td>
</tr>
<tr>
<td>Indian Statute Law, Field</td>
<td>34</td>
</tr>
<tr>
<td>Industrial and Provident Societies.</td>
<td>12</td>
</tr>
<tr>
<td>Brabrook</td>
<td>12</td>
</tr>
<tr>
<td>International Law</td>
<td></td>
</tr>
<tr>
<td>Deane</td>
<td>36</td>
</tr>
<tr>
<td>Hamel</td>
<td>35</td>
</tr>
<tr>
<td>Philimore</td>
<td>19</td>
</tr>
<tr>
<td>Irish Land Act, Butt</td>
<td>31</td>
</tr>
<tr>
<td>Jersey (Law of)</td>
<td>Bowditch</td>
</tr>
<tr>
<td>Joint Stock, Banks, Grant</td>
<td>26</td>
</tr>
<tr>
<td>Companies, Shelford</td>
<td>7</td>
</tr>
<tr>
<td>Jurisprudence</td>
<td></td>
</tr>
<tr>
<td>Form of Law, Holland</td>
<td>32</td>
</tr>
<tr>
<td>Law Magazine</td>
<td>39, 40</td>
</tr>
<tr>
<td>Justice of Peace, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Landlord and Tenant</td>
<td></td>
</tr>
<tr>
<td>Fawcett</td>
<td>6</td>
</tr>
<tr>
<td>Law Exam, Journal</td>
<td>5, 38</td>
</tr>
<tr>
<td>Law Magazine</td>
<td>39, 40</td>
</tr>
<tr>
<td>Law Studies, Cutler's Lecture</td>
<td>35</td>
</tr>
<tr>
<td>Pranciel</td>
<td>35</td>
</tr>
<tr>
<td>Mosely</td>
<td>21</td>
</tr>
<tr>
<td>Smith</td>
<td>34</td>
</tr>
<tr>
<td>Stephen's Blackstone</td>
<td></td>
</tr>
<tr>
<td>Leading Cases, Real Property, Tudor</td>
<td>17</td>
</tr>
<tr>
<td>Leases</td>
<td></td>
</tr>
<tr>
<td>Crabbe</td>
<td>20</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Legacy Duties, Shelford</td>
<td>21</td>
</tr>
<tr>
<td>Legitimacy, Gardner Fearnage</td>
<td>35</td>
</tr>
<tr>
<td>Life Assurance, Blayney</td>
<td>37</td>
</tr>
<tr>
<td>Libel, Starkie</td>
<td>14</td>
</tr>
<tr>
<td>Local Government, Glen</td>
<td>31</td>
</tr>
<tr>
<td>Lords Chancellors, &amp;c., Catalogue of, Hardy</td>
<td>37</td>
</tr>
<tr>
<td>Lord Mayor's Court, Brandon</td>
<td>31</td>
</tr>
<tr>
<td>Lunacy, Phillips</td>
<td>30</td>
</tr>
<tr>
<td>Magisterial Law, Acts, Davis</td>
<td>34</td>
</tr>
<tr>
<td>Practice, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Maritime Warfare, Deane</td>
<td>36</td>
</tr>
<tr>
<td>Hamel</td>
<td>35</td>
</tr>
<tr>
<td>Marriage Acts, Burn, 37</td>
<td></td>
</tr>
<tr>
<td>Master and Servant, Das</td>
<td>22</td>
</tr>
<tr>
<td>Master and Workmen, Lovesy</td>
<td>27</td>
</tr>
<tr>
<td>Mercantile Accounts, Pulling</td>
<td>36</td>
</tr>
<tr>
<td>Militia Laws, Dryer, Mines and Minerals, Balfour</td>
<td>33</td>
</tr>
<tr>
<td>Mortgages, Fisher, Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Municipal Elections, Sewell</td>
<td>37</td>
</tr>
<tr>
<td>Naturalization, Cutter 11</td>
<td></td>
</tr>
<tr>
<td>Negligence, Saunders, 11</td>
<td></td>
</tr>
<tr>
<td>Neutrals, Philimore</td>
<td>19</td>
</tr>
<tr>
<td>Nisi Prius, Leigh</td>
<td>36</td>
</tr>
<tr>
<td>Nuances, Glen</td>
<td>31</td>
</tr>
<tr>
<td>Parliamentary</td>
<td></td>
</tr>
<tr>
<td>Clifford &amp; Stephens</td>
<td>14</td>
</tr>
<tr>
<td>Davis</td>
<td>25</td>
</tr>
<tr>
<td>May</td>
<td>19</td>
</tr>
<tr>
<td>Partnership, Dixon</td>
<td>13</td>
</tr>
<tr>
<td>Potthier</td>
<td>37</td>
</tr>
<tr>
<td>Patents, Curtis</td>
<td>36</td>
</tr>
<tr>
<td>Norman</td>
<td></td>
</tr>
<tr>
<td>Peerage Claim, Finson's Writes</td>
<td>35</td>
</tr>
<tr>
<td>Lemarchant's Gardner 35</td>
<td></td>
</tr>
<tr>
<td>Petty Sessions, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Pleading, Common Law, Chitty, Jun, Greening</td>
<td>22</td>
</tr>
<tr>
<td>Equity, Dreyow, Lewis</td>
<td>16</td>
</tr>
<tr>
<td>Guide, Anstey</td>
<td>37</td>
</tr>
<tr>
<td>Poor Law Orders</td>
<td>25</td>
</tr>
<tr>
<td>Precedents, Conveyancing</td>
<td>20</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Preliminary Examination Journal</td>
<td>40</td>
</tr>
<tr>
<td>Priority, Fisher</td>
<td>9</td>
</tr>
<tr>
<td>Private Bills, May</td>
<td>29</td>
</tr>
<tr>
<td>Prize Law, Lushington 27</td>
<td></td>
</tr>
<tr>
<td>Probate, Practice, Coote</td>
<td></td>
</tr>
<tr>
<td>Forms, Chadwick</td>
<td>26</td>
</tr>
<tr>
<td>Duties, Shelford</td>
<td>21</td>
</tr>
<tr>
<td>Provident Societies, Brabrook</td>
<td>12</td>
</tr>
<tr>
<td>Public Health, Glen</td>
<td>31</td>
</tr>
<tr>
<td>Questions on Stephen's Comments</td>
<td>4</td>
</tr>
<tr>
<td>Railways, Redfield</td>
<td>36</td>
</tr>
<tr>
<td>Shelford</td>
<td>25</td>
</tr>
<tr>
<td>Compensation, Ingram</td>
<td>11</td>
</tr>
<tr>
<td>Carriers, Powell</td>
<td>34</td>
</tr>
<tr>
<td>Real Property, Tudor</td>
<td>17</td>
</tr>
<tr>
<td>Chart, Fearnie</td>
<td>57</td>
</tr>
<tr>
<td>Referees' Court Practice, Cliford &amp; Stephens</td>
<td>14</td>
</tr>
<tr>
<td>Registration, Davis</td>
<td>23</td>
</tr>
<tr>
<td>Religion, Church and State</td>
<td>38</td>
</tr>
<tr>
<td>Supremacy of Crown</td>
<td>38</td>
</tr>
<tr>
<td>Religious Confession, Baddeley</td>
<td>38</td>
</tr>
<tr>
<td>Ritual</td>
<td></td>
</tr>
<tr>
<td>Bayford</td>
<td>38</td>
</tr>
<tr>
<td>Bullock</td>
<td>38</td>
</tr>
<tr>
<td>Hamel</td>
<td>38</td>
</tr>
<tr>
<td>Philimore</td>
<td>33</td>
</tr>
<tr>
<td>Roman Law, Gaus</td>
<td>19</td>
</tr>
<tr>
<td>Ortolian</td>
<td>10</td>
</tr>
<tr>
<td>Tomkins</td>
<td>10</td>
</tr>
<tr>
<td>Tomkins and Jencken</td>
<td>12</td>
</tr>
<tr>
<td>Savings Banks, Grant</td>
<td>29</td>
</tr>
<tr>
<td>Sciences (the) and Law</td>
<td>35</td>
</tr>
<tr>
<td>Sea Shore, Hunt</td>
<td>10</td>
</tr>
<tr>
<td>Settlements, Voluntary, &amp;c., Cutten</td>
<td>35</td>
</tr>
<tr>
<td>Voluntary, Hunt</td>
<td>39</td>
</tr>
<tr>
<td>Sewers, Woolrych</td>
<td>22</td>
</tr>
<tr>
<td>Sheriff, Sewell</td>
<td>37</td>
</tr>
<tr>
<td>Sheriff's Court, Davis</td>
<td>6</td>
</tr>
<tr>
<td>Short Hand, Gurney</td>
<td>30</td>
</tr>
<tr>
<td>Slander, Starkie</td>
<td>14</td>
</tr>
<tr>
<td>Solicitors' Bookkeeping, Combs</td>
<td>37</td>
</tr>
<tr>
<td>Specific Performance, Fry</td>
<td>30</td>
</tr>
<tr>
<td>Stock Exchange, Keynes</td>
<td>37</td>
</tr>
<tr>
<td>Succession Duty, Shelford</td>
<td>21</td>
</tr>
<tr>
<td>Summary Convictions, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Suit in Equity, Hunter</td>
<td>16</td>
</tr>
<tr>
<td>Tenant, Landlord and, Fawcett</td>
<td>8</td>
</tr>
<tr>
<td>Tithes, Schomberg</td>
<td>37</td>
</tr>
<tr>
<td>Trades Unions, Brabrook</td>
<td>12</td>
</tr>
<tr>
<td>Treaties, Hertslet</td>
<td>37</td>
</tr>
<tr>
<td>Trusts, Charitable, Tudor</td>
<td>13</td>
</tr>
<tr>
<td>Turnpike Laws, Oke</td>
<td>24</td>
</tr>
<tr>
<td>Vendors &amp; Purchasers, Seahorne</td>
<td>6</td>
</tr>
<tr>
<td>Water Companies Acts</td>
<td>25</td>
</tr>
<tr>
<td>Waters, Hunt</td>
<td>10</td>
</tr>
<tr>
<td>Wills, Coote</td>
<td>7</td>
</tr>
<tr>
<td>Crabb</td>
<td>20</td>
</tr>
<tr>
<td>Rouse</td>
<td>12</td>
</tr>
<tr>
<td>Tournament, Wigram</td>
<td>33</td>
</tr>
<tr>
<td>Winding-up, Grant</td>
<td>26</td>
</tr>
<tr>
<td>Shelford</td>
<td>7</td>
</tr>
<tr>
<td>Window Lights, Latham</td>
<td>18</td>
</tr>
</tbody>
</table>
Stephen's Blackstone's Commentaries.—Sixth Edition.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, partly founded on Blackstone. The Sixth Edition, by JAMES STEPHEN, LL.D., of the Middle Temple, Barrister-at-Law, formerly Recorder of Poole, and late Professor of English Law at King's College, London.

"It would be impossible, without entering minutely into details, to notice at any length this most valuable work. It is one which cannot be too highly recommended, not only to the profession but to the general public. It is a great mistake to act upon the notion that the study of the law is a matter of interest to lawyers only. Now there is no work which gives a summary of the English law at once so exhaustive and intelligible to the general reader as this publication of Dr. Stephen. He has incorporated into it all those portions of Blackstone's great work which would at the present day be useful to the reader."—Law Magazine.

"Mr. Stephen's Commentaries from the first edition, it became necessary that his work should be edited by a lawyer as able and a scholar as graceful as Blackstone himself. Mr. Serjeant Stephen, more than twenty years ago, conceived the happy thought of introducing the necessary alterations into the text itself, and, as he says in his preface, "interprets his own composition with it as freely as the purpose of general improvement it might seem to require. The first edition, so generally received, acknowledged at once as an able reproduction of an invaluable treatise on English law, and has since passed rapidly through several editions, till the student took the acknowledged students' text book, and is accepted by the critics as a standard work. Mr. James Stephen, a no less distinguished and painstaking legal writer than his father, has with equal skill and research, superintended the later editions, made the amendments rendered necessary by alterations in the law, and incorporated and commented upon recent statutes, judgments and decisions with such an arrangement, as hold a group and with as much felicity of style, adapted to and reading smoothly with that portion of Blackstone's text which still remains, as his predecessor in the same path; and the four volumes now published may be safely regarded as a full exposition and a sound authority on English law to the present time."—Law Journal.

"This new edition of the well known Stephen's Commentaries deserves a cordial welcome, for few years have been more eventful in legislation than those which have passed since the publication of the fifth edition. The skill with which the new matter is incorporated with the old is particularly remarkable, and in spite of the incongruity of the materials, the threefold authorship of Blackstone, Serjeant Stephen, and the present editor, the result is perfectly homogeneous and satisfactory. Indeed the 'noting up' appears to have been done throughout with much ingenuity and industry, and the alterations, great and small, have been made with excellent judgment. We have no doubt that the work will in its most recent shape retain all its original popularity. We very sincerely recommend this standard text book to all members of the profession. To the student it is simply invaluable, but it is also a useful companion to the most experienced lawyer."—Solicitor's Journal.

"The popular notion of the study of law is, that it is dry. No person who reads these Commentaries will call it so. It is a fascinating book. After the editions, it is impossible to say anything new of a standard work like this. We can but repeat that Stephen's Blackstone is indispensable, not to the law student alone, but to all who take part in public affairs, and especially to magistrates, who ought to be examined in it before they are permitted to sit upon the bench. Nay, it may be affirmed that no gentleman can be considered properly educated unless he has acquired so much knowledge of the law of England as is contained in Blackstone noted up by Stephen."—Law Times.

"How careful Mr. James Stephen, the present editor, is to improve the work may by reference be ascertained. Mr. Serjeant Stephen, by his great ability, by his unwearied industry, his simplicity and clearness of diction has made himself the first tutor to English law students. With a knowledge of the existence of these Commentaries, the student need not ask, with what work am I to commence my legal studies? Here he will find every branch of English law ably treated on. Not only is the work an essential to the beginner, but it will be found of the greatest use at all times, as well after as before call or admission. Any praise on our part of such a work is wholly unnecessary; as we have before remarked, we feel assured we need do nothing more than announce a new edition, to cause an eager demand amongst all law students, and indeed amongst every one wishing to gain an insight into the laws of his country."—Law Examiner Reporter.

"A very valuable feature is the reference made to the cases on each point. This constitutes the work a law library on a small scale. It is a book which is indispensable to every student of the law, whilst practitioners will find it to their advantage to consult it frequently, since they will find therein the law laid down scientifically, concisely, and, above all, accurately."—Irish Law Times.

Questions on Stephen's Blackstone.

QUESTIONS FOR LAW STUDENTS ON THE SIXTH EDITION OF MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND. By JAMES STEPHEN, LL.D., of the Middle Temple, Barrister at Law.

"Nothing can be more useful than a series of questions on a book like Stephen's Blackstone, intended as it is principally for the use of students, and touching as it does on every branch of the law."—Law Magazine.
THE

LAW EXAMINATION JOURNAL

AND

LAW STUDENT'S MAGAZINE.

Published on the morning of the second day after each respective Final Examination, in Hilary, Easter, Trinity and Michaelmas Terms in each year. Each Number price 1s., by post 1s. 1d.; or annual subscription, payable in advance, 4s., by post 4s. 4d.

CONTENTS OF No. I.—Michaelmas, 1869.
I. County Courts, their Merits and Defects to Local Tribunals. By the Editor.
II. Summary of new Decisions in Bank and at Nisi Prius.
III. Analysis of the more important practical Statutes of 32 & 33 Vict.
IV. Intermediate Examination Questions and Answers (T. T. 1869).
V. Final Examination Questions and Answers (M. T. 1869).
VI. Notes on the Examinations.
VII. Correspondence.

CONTENTS OF No. II.—Hilary, 1870.
I. Note by the Editor.
II. On Attornment in Mortgages.
III. Digest of important recent Decisions.
IV. Intermediate Examination Questions and Answers (M. T. 1869).
V. Final Examination Questions and Answers (R. T. 1870).
VI. Correspondence.

CONTENTS OF No. III.—Easter, 1870.
I. On the Fusion of the Two Branches of the Profession, by the Editor.
II. Digest of important recent Decisions.
III. Intermediate Examination Questions and Answers (H. T. 1870).
IV. Final Examination Questions and Answers (E. T. 1870).
V. Reviews of New Books.
VI. Correspondence.

CONTENTS OF No. IV.—Trinity, 1870.
I. Leading Article on the Fusion of the Two Branches of the Legal Profession, by the Editor, concluded.
II. Digest of important Legal Decisions.
III. Intermediate Examination Questions and Answers (Easter, 1870).
IV. Final Examination Questions and Answers (Trinity, 1870).
V. Reviews of New Books.
VI. Correspondence.

CONTENTS OF No. V.—Michaelmas, 1870.
I. On the Legislation of 1870. By the Editor.
II. Digest of important Legal Decisions.
III. Intermediate Examination Questions and Answers (Trinity, 1870).
IV. Final Examination Questions and Answers (Michaelmas, 1870).
V. Reviews of New Books.
VI. Correspondence.

CONTENTS OF No. VI.—Hilary, 1871.
I. Our Jury System. By the Editor.
II. Digest of important Legal Decisions.
III. Intermediate Examination Questions and Answers (Michaelmas, 1870).
IV. Final Examination Questions and Answers (Hilary, 1871).
V. Reviews of New Books.
VI. Correspondence.

CONTENTS OF No. VII.—Easter, 1871.
I. Some Remarks on the Married Women's Property Act, 1870. By the Editor.
II. Digest of important Legal Decisions.
III. Intermediate Examination Questions and Answers (Hilary, 1871).
IV. Final Examination Questions and Answers (Easter, 1871).
V. Reviews of New Books.
VI. Correspondence.

CONTENTS OF No. VIII.—Trinity, 1871.
I. On the Necessity of providing a Public Prosecutor. By the Editor.
II. How Mr. Manfield Denman passed his "Foil." By E. H.
III. Digest of Cases. Note by the Editor.
IV. Intermediate Examination Questions and Answers (Easter, 1871).
V. Final Examination Questions and Answers (Trinity, 1871).
VI. Correspondence, &c.
Davis's County Courts Practice and Evidence.—4th Edit.

8vo. 36s. cloth.

THE PRACTICE and EVIDENCE in ACTIONS in the COUNTY COURTS. By James Edward Davis, of the Middle Temple, Esq., Barrister-at-Law.

* * This is the only work on the County Courts which gives Forms of Plaints, and treats fully of the Law and Evidence in Actions and other Proceedings in these Courts.

"Mr. Davis's work has grown with the growth of his subject. The original edition was a manual—a title as moderate as that of the first County Court Statute, 'An Act for the more easy Recovery of Small Debts';—and now the fourth edition appears under the title, fully justified by the contents, of The Practice and Evidence in the County Courts. Mr. Davis's work has stood almost as long a trial as the County Courts themselves. The chapters on Evidence, clearly and tersely written, will repay the perusal of every common law practitioner, whether in the County or the Superior Courts. The book is altogether thoroughly well turned out down to its ready-cut pages, for which innovation all persons, especially reviewers, will thank the publishers."—Law Journal.

"From a humble beginning it has grown into a very ponderous volume, with all necessary forms for practice, and full instructions to the court and to the practitioner what is to be done, and how it is to be done, when a case comes before them. "It was because these instructions were so full and accurate that Mr. Davis succeeded in so easily establishing his work as the Practice of the County Courts, and in maintaining the position he had won. All who have used it speak well of it. They say they can readily find what they want, and, better still, it contains the information they want, which cannot be said of all books of practice. This has been Mr. Davis's design in his Practice of the County Courts. There is another feature of this work. Besides the Practice, it contains a complete treatise on Evidence in the County Courts, after the manner of Salwey's Nisi Prius. Each of the subjects of litigation ordinarily brought before the courts is separately treated, and the law minutely stated, with the evidence required to sustain or to defeat the action. "It is undoubtedly the best book on the Practice of the County Courts."—Law Times.

"A text book which is well known in both branches of the Legal Profession. From a small beginning it has gradually grown into a bulky volume, and now contains an exhaustive exposition of the Law and Practice relating to the County Courts. The third part of this manual contains a valuable digest of the Law of Evidence as applicable to the procedure of the County Courts. In this particular it certainly excels all the other text books on the subject. The importance of this part of the work cannot be too highly estimated."—Law Magazine.

"This is a greatly enlarged edition of Davis's County Court Practice, a work well enough known to need no introduction to the legal public, or at any rate to that portion thereof which is concerned with proceedings in the County Courts. We can safely and heartily recommend the book for the perusal of all intending practitioners in any County Court."—Selectors' Journal.

Goldsmith's Equity.—Sixth Edition.

Post 8vo., cloth.


"The excellencies of 'Smith’s Manual and 'Hunter’s Suit’ appear to be successfully combined in Mr. Goldsmith’s treatise."—Law Magazine.

Seaborne’s Law of Vendors and Purchasers.

Post 8vo., cloth.

A CONCISE MANUAL of the LAW of VENDORS and PURCHASERS of REAL PROPERTY. By Henry Seaborne.

** This work is designed to furnish Practitioners with an easy means of reference to the Statutory Enactments and Judicial Decisions regulating the transfer of Real Property, and also to bring these authorities in a compendious shape under the attention of Students.
Coote's Probate Court Practice.—Sixth Edition.

8vo., 25s. cloth.

THE PRACTICE of the COURT OF PROBATE in COMMON FORM BUSINESS. By HENRY CHARLES COOTE, F.S.A., Proctor in Doctors' Commons, &c., Also a Treatise on the Practice of the Court in Contenious Business. By THOMAS H. TRISTRAM, D.C.L., Advocate in Doctors' Commons, and of the Inner Temple. Sixth Edition, with great Additions, and including all the Statutes, Rules, Orders, &c., to the present Time; together with a Collection of Original Forms and Bills of Costs.

"In 1858 Mr. Coote published a first attempt to explain the principles which were to regulate the Common Form Practice of the then new Court of Probate. Very welcome, indeed, therefore, was his oppoturne book of practice, and its utility has been significantly proved by the fact that we have the sixth edition now before us bound up with Dr. Tristram's treatise on the Practice of the Court of Probate in Contenious Business."—Law Magazine.

"A book of practice that has arrived at a sixth edition needs no praise. The fact that it is the best certificate of worth; for practitioners would not have continued to use it if it had not been found entirely adapted for their requirements. Coote has followed the course of the work, and grown in each successive edition, as new statutes, new rules of practice, and new decisions accumulate year by year. But the authors have not been content with mere addition; they have performed diligently the no less important task of reducing and excising the law that has become extinct through subsequent changes. It is the book on its subject, and that is the highest praise that can be given to it."—Law Times.

"Every year the legal arena of probate practice extends itself, and the business which was up to the end of the year 1857 a monopoly in the hands of the ancient proctors has now become the common property of the profession. It is no marvel, then, that the book before us has in twelve years run through five editions, and that the new year of 1871 others in the sixth. Neither the authors nor the publishers would care to deny, that this substantial success is due, in a great measure, to the pressing need that has existed for a guide to probate practice; but we may also say, the law has declared. To the legal profession the work has been brought about as much by its own intrinsic excellence as by the great demand for a work of the kind, Coote's 'Probate Practice' has been the standard work for twelve years, and we see no reason to doubt that it will maintain its present position for many years to come."—Law Journal.

SHELFORD'S COMPANIES.—2nd Ed. by Piteairn and Latham.

8vo., 21s. cloth.

SHELFORD'S LAW OF JOINT STOCK COMPANIES; containing a Digest of the Case Law on that subject; the Companies Acts, 1862, 1867, and other Acts relating to Joint Stock Companies; the Orders made under those Acts to regulate Proceedings in the Court of Chancery and County Courts, and Notes of All Cases interpreting the above Acts and Orders. Second Edition, much enlarged, and bringing the Statutes and Cases down to the date of publication. By DAVID PITEAIRN, M.A., Fellow of Magdalen College, Oxford, and of Lincoln's Inn, Barrister-at-Law; and FRANCIS LAW LATHAM, B.A., Oxon; of the Inner Temple, Barrister-at-Law, author of "A Treatise on the Law of Window Lights."

"We may at once state that, in our opinion, the merits of the work are very great, and we confidently expect that it will be at least for the present the standard manual of joint stock company law. The facts given and research have been expended by Mr. Piteairn in no case doubt wherein reads only a few pages of the book; the result of each case which has any bearing upon the subject under discussion is very lucidly and accurately stated. We heartily congratulate him on the appearance of this work for which we are certain will be of great success. There is hardly any portion of the law at the present day so important as that which relates to joint stock companies, and that portion of the subject will be the standard authority on the subject we have not the shadow of a doubt."—Law Journal.

"Although nominally a second edition of Mr. Shelford's treatise, it is in reality an entirely new work, and the judiciousness and correctness with which Mr. Shelford have been changed, and, we think, improved by Mr. Piteairn. A full and accurate index is added, and the very desirable addition of the names of the persons and the subject under which each article is to be found in the index. The book is a valuable and trustworthy one, and we have not the shadow of a doubt that it will be a standard authority on the subject whereof, we can have no doubt, will be fully recognized by the profession."—Law Magazine.

"This book has always been the subject of comment on company law, and will, apparently, long continue to occupy that position. It is perhaps even more useful to the legal profession than to the general public, as it is the best source of information to which the latter can go."—Financial and Money Market Review.
Fawcett's Law of Landlord and Tenant.

8vo., 1s. cloth.

A COMPENDIUM of the LAW OF LANDLORD and TENANT. By William Mitchell Fawcett, of Lincoln's Inn, Esq., Barrister-at-Law.

"This new compendium of the law on a wide and complicated subject, upon which information is constantly required by a vast number of persons, it sure to be in request. It never wanders from the point, and being intended not for students of the law, but for lessors and lessees and their immediate advisers, wisely avoids historical disquisitions, and uses language as untechnical as the subject admits. It may safely be assumed to contain information on all the ordinary questions which the practice of either party may require to be answered."—Law Journal.

"The author has succeeded in compressing the whole of his subject within the reasonable compass of 373 pages. It may roughly be said of the present work that it is the work that was thought out, in accordance with the predominant character of the law at the present day; and Mr. Fawcett in the conduct of this enterprise has made a very considerable addition to the modern law to impart to his compendium a degree of authenticity which greatly enhances its value. The arrangement of the matter, so far as he has stated the law in the very words of the authorities. We have discovered plain utility to be the test. The book is subdivided, and an ambitious merit to be that of Mr. Smith and Mr. Soden. Probably we should be justified in saying that Mr. Fawcett has made more nearly reached his aim, lower as it is, than Mr. Smith and Mr. Soden."—Law Magazine.

"The first thing which strikes us with regard to Mr. Fawcett's book is the extreme terseness and verbal accuracy of the language employed. In this respect he sets a most laudable example to text book writers. The amount of information compressed into the book is very large. The plan of the book is extremely good, and the arrangement adopted has enabled the author to put together in one place the whole law on any particular branch of the subject, and to avoid repetitions. Thus not only is it easy to find what the author has to say on any particular point, but when once we have been informed of the law, we may be satisfied that we have found all the book contains upon the point. In this respect, doubtless probably from its smaller size it must contain less information than Woodfall, it will be found far more convenient for ordinary use than that work, in which repetitions are so frequent that a hasty searcher usually fails to find anything like all that is contained in it upon his point. The advantage in this respect will make it most convenient for noting new cases, as the right place for inserting them will be found, and not in one place, but in several; in this respect, therefore, Mr. Fawcett's book has an advantage. We may add that Mr. Fawcett's book is given in two sets of reports, while Mr. Cave's are to one only."—Solicitors' Journal.

"Woodfall was, and perhaps is, the great authority on this subject. But his book is bulky, much of it is obsolete, and much of the legislation and the judges have made many changes which sufficiently justify Mr. Fawcett in giving a new treatise on the law, a treatise of such wide-spread interest. His aim, however, is conciseness. He contents himself with a plain statement of the existing law, practically omitting all matters of merely historical interest and topics collateral to the special subjects; he has deemed it unnecessary to treat of the details of judicial procedure, or to enact a mass of precedents of leases which are already possessed by the profession in other works. Above all, it has been his purpose to state the law in the language of the authorities, presenting the principles enunciated in the very words of the judges. Another excellent feature is a concise statement of either point of each party may require to be answered."—Law Journal.

"This is a work which we can confidently recommend to the notice not only of the members of the legal profession, but to such of our general readers as have anything to do with the letting of either houses or land. In the carrying out of this task he has, to our minds, been very successful. The arrangement of the work in general is extremely clear and concise, and the range of authorities unusually wide. In the appendix Mr. Fawcett gives a list of the leading cases, which will be found useful."—Public Opinion.

"Giving a clear and practical view of the subject, unembarrassed by historical associations or unnecessary details of procedure, but presenting the existing law in a form as intelligible to the public as useful to the lawyer; the references are plentiful, and the indices all that they should be."—Daily Telegraph.

"A Compendium of the Law of Landlord and Tenant, by Mr. William Mitchell Fawcett, seeks to present its existing state in the most condensed and practical manner."—Times.

"To disremember the law of landlord and tenant, with its words and tedious nuance, is a worthless and useful design, and it is skillfully accomplished in the work before us. It is a model of brevity, and the arrangement of the important subject of the law of landlord and tenant, and cannot fail to be appreciated and generally referred to."—The World.

"We cordially commend the work, not only, as we have said, to the professional reader, as a really handy book of reference, but also to the owners and occupiers of property generally, as they are constantly likely to be called upon to make contracts and agreements which are a study of the law is of the highest importance. In this respect the work is admirably adapted to the use of the public. But it is a work of any kind which shall be successfully avoided. Mr. Fawcett deserves the cordial thanks of the profession and the public for this excellent addition to the legal literature of the subject, and for the pains he has taken to render his production as complete and as compact as possible within the reasonable limits to which his work is restricted."—Morning Advertiser.

"This appears to us to be a book of considerable practical value, and one likely to be found useful not only by the members of the legal profession, but also by such laymen as, in the character either of landlord or tenant, happen to be interested in land or house leases. Indeed, so clearly and intelligibly does the book read, that for one instance—shall we confess it?—a don't cross my heart, did the chairman of quarter sessions, of whom Talfourd speaks in one of his essays, we hesitated to accept as good law, what appeared to us such excellent sense."—Lawn.

Two vols. royal 8vo., 55s. cloth.


"For a length of time it has been received as the best text book on the law of mortgages, and it has recently received the honours of a second edition. We have never been niggards towards Mr. Fisher's very laborious, learned and useful treatise, and we still see no reason to retract those commendations or to reduce their splendour. His book thoroughly deserves the character it has won of being the only good and complete repository we have of the law of mortgages, and other securities upon property."—Law Magazine.

"The second edition of this book, comprised in two volumes of royal octavo, has little beyond its paternity to identify it with the original volume which appeared in 1856. If we speak of the author's first essay as merely tenfold and more masterly, and partly due to draw particular attention to the very complete arrangement and copious detail of the edition now before the public . . . . . . .

and we doubt not that the excellence of the work will receive its due appreciation at the hands of the profession. A word in conclusion is due to the clearness and simplicity which pervades Mr. Fisher's writing. If his language is too often held and devoid of grace it is never obscure, and we think that the absence of attractive composition will not in these days be accounted a demerit in a treatise designed solely for professional purposes, which possesses the essential qualities of accurate learning and lucid arrangement."—Law Journal.

"The labour bestowed upon it by Mr. Fisher will be best understood by this fact. The mere list of cases cited in the text fills forty-three pages in double columns, and the list of statutes and orders cited occupies fifteen pages. We conclude by commending this work equally to the practitioner and the student, if it be invaluable to the former for reference, to the latter for reading and digesting."—Law Times.


8vo., 16s. cloth.

THE PRACTICE of the HIGH COURT of ADMIRALTY of ENGLAND: also the Practice of the Judicial Committee of Her Majesty's Most Honorable Privy Council in Admiralty Appeals, with Forms and Bills of Costs. By HENRY CHARLES COOTE, F.S.A., one of the Examiners of the High Court of Admiralty, Author of "The Practice of the Court of Probate," &c. Second Edition, almost entirely re-written, with a Supplement giving the COUNTY COURTS JURISDICTION and Practice in Admiralty, the Act of 1868, Rules, Orders, &c.

The Supplement containing the County Court Practice in Admiralty is complete in itself and may be had separately, 2s. served.

** This work contains every Common Form in use by the Practitioner in Admiralty, as well as every description of Bill of Costs in such Court, a feature possessed by no other work on the Practice in Admiralty.

"Mr. Coote, being an Examiner of the Court, may be considered as an authoritative exponent of the points of which he treats. His treatise is, substantially considered, everything that can be desired to the practitioner."—Law Magazine.

"The book before us is a second and enlarged edition of a work on the Practice of the Admiralty Court, written by the author some ten years ago. It is, however, a great improvement on its predecessor, being much fuller, and more systematically arranged, and containing greater facilities for reference. The first part of the book is a treatise on the practice of the Court, which appears to us to be very excellently and to go thoroughly into the subject. The second part is a similar treatise on the practice of the Judicial Committee of the Privy Council in Admiralty matters, written on the same system as the former part. The appendix contains a large number of common forms and precedents of pleadings used in the Court of Admiralty, together with bills of costs. Altogether Mr. Coote has done his work very carefully and completely, and we think his labours will be duly appreciated by Admiralty practitioners."—Soliciitors' Journal.

"The first edition of this excellent work was produced with a purpose of illustrating the practice of the High Court of Admiralty, just then subordinated to the 'Rules of 1859' drawn up by the late distinguished judge. Since then several important changes have been carried out, both in the matter of an extended jurisdiction and of practice. These changes it has been Mr. Coote's object to incorporate in the present edition of his work. In addition he has increased the utility of his book by a chapter on the practice of the Judicial Committee of the Privy Council in Admiralty Appeals, and by a copious set of Admiralty precedents, in which it is the author's hope and belief that no necessary common form has been omitted. The present edition appears very seasonably."—Shipping and Mercantile Gazette.

"Mr. Coote has the great advantage of experience; he has long been a practitioner in the Court as a proctor; he is consequently familiar with those minutiae of practice which mark the distinction between the student and the practical man.

"Mr. Coote is a successful writer upon the Practice of the Probate and the Admiralty Courts. His book on the former has reached a fifth edition, and the volume before us is a second edition."—Law Times.
Hunt's Boundaries, Fences and Foreshores.—2nd Edit. 
Post 8vo., 12s. cloth.

"It speaks well for this book that it has so soon passed into a second edition. That its utility has been recognised, and its value appreciated, Mr. Hunt has availed himself of the opportunity of a second edition to note up all the cases to this time, and to extend and improve some of the chapters, especially that which treats of rights of property on the sea shore and the subject of stiles and commissions of sewers."—Law Times.

There are few more fertile sources of litigation than those dealt with in Mr. Hunt's valuable book. It is sufficient here to say that the volume ought to have a larger circulation than ordinarily belongs to law books, that it ought to be read in every country parishes library, that the cases are brought down to the latest date, and that it is carefully prepared, clearly written, and well edited."—Law Magazine.

"Mr. Hunt chose a good subject for a separate treatise on Boundaries and Rights to the Seashore, and we are not surprised to find that a second edition of his book has been brought out. The present edition contains much new matter. The chapter especially which treats on rights of property on the seashore, has been greatly extended. Additions have been also made to the chapters relating to the fishing of the property of mine owners and railway companies. All the cases which have been decided since the work first appeared have been introduced in their proper places. Thus it will be seen this new edition has a considerably enhanced value."— Solicitors' Journal.

Ortolan's Roman Law, translated by Prichard & Nasmith. 8vo., 28s. cloth.

"We know of no work, which, in our opinion, exhibits so perfect a model of what a text-book ought to be. Of the translation before us, it is enough to say, that it is a faithful representation of the original."—Law Magazine.

This translation, from its great merit, deserves a warm reception from all who desire to be acquainted with the history and elements of Roman law, or have its interests as a necessary part of their studies. The book is, with regard to that great work it is enough to say, that English writers have been continually in the habit of doing piece-meal work. Messrs. Prichard and Nasmith have done wholesale. Neither we have bad but gold-dust from the mine; now we are fortunate in obtaining a nugget. Mr. Nasmith is already known as the designer of a chart of the history of England, which has been generally approved, and bids fairly for extensive adoption."—Law Journal.

"We are extremely glad to welcome the appearance of a translation of any of the works of M. Ortolan, and the history and generalization of Roman law, which are now presented to us in English, are perhaps the most useful books that could be offered at the present time to students of the Roman law. The utility of Roman law, as an instrument of legal education, is now generally admitted. The English of the book is unusually free from foreign idioms which so often disfigure translations. The book itself we strongly recommend to all who are interested in Roman law, jurisprudence or history, and who are not sufficiently familiar with French, to be able to read the original with ease."—Solicitors' Journal.

Tomkins' Institutes of Roman Law.
Part I. royal 8vo. (to be completed in Three Parts) 12s. cloth.
THE INSTITUTES OF THE ROMAN LAW. PART I.
The Sources of the Roman Law and its external History to the decline of the Eastern and Western Empires. By Frederick J. Tomkins, M.A., D.C.L., Barrister-at-Law, of Lincoln's Inn.

"This work promises to be an important and valuable contribution to the study of the Roman Law. It is modelled on the book of Tomkins. It is calculated to promote the study of Roman Law; and both at the universities and in the inns of Court it is a work which may safely be employed as a text-book."—Law Times.

This work is pronounced by its author to be strictly necessary. But in regard to the labour bestowed, the research exercised, and the materials brought together, it seems to deserve a more ample tribute than that of an elementary treatise. The chapter on legal instruction, detailing the systems of legal education pursued in the various epochs of Rome, reflects great credit on the author, and as far as we know is purely original."—Law Journal.

"We know of no other book in which anything like the same amount of information can be acquired with the same ease. If the second part is as well executed as the first and bears a due proportion to it, we think the work bids fair to become the standard text book for legal students."—Solicitors' Journal.

The study of this volume is necessary to all who wish to be properly acquainted with the history and literature of the Roman law."—Irish Law Times.

"Mr. Tomkins has produced a book that was long needed."—Law Examination Reporter.
Saunders' Law of Negligence.

1 vol., post 8vo, 9s. cloth.

A TREATISE on the LAW applicable to NEGLIGENCE.

By THOMAS W. SAUNDERS, Esq., Barrister at Law, Recorder of Bath.

"The book is admirable; while small in bulk, it contains everything that is necessary, and its arrangement is such that one can readily refer to it. Amongst those who have done good service, Mr. Saunders will find a place."—Law Magazine.

"In the useful little volume now before us he has gathered the whole law of negligence. All his works are distinguished by painstaking and accuracy. This one is no exception; and the subject, which is of very extensive interest, will insure for it a cordial welcome from the profession."—Law Times.

"The references to the cases are given much more fully, and on a more rational system than is common with text book writers. He has a good index; he has produced a work which will facilitate reference to the authorities."—Solicitors' Journal.

"As a work of reference the book will be very welcome in the office of the solicitor or in the chambers of the barrister."—Morning Advertiser.

"A short and clear treatise like the present on the law relating to the subject ought to be welcomed. It is a moderate size volume, and makes references to all the authorities on the question easy."—Standard.

"It is a great advantage to the legal profession to find all the law of negligence collected and arranged in a manual of reasonable size. Such is Mr. Saunders' book."—Public Opinion.


"A careful treatise on a branch of law which is daily acquiring importance. The manual before us is a useful treatise."—Echo.

Ingram's Law of Compensation.—2nd Edit. by Elmes.

Post 8vo., 12s. cloth.


"We say at once that it is a work of great merit. It is a concise, clear and complete exposition of the law of compensation applicable to the owners of real property and railway and other companies."—Law Magazine.

"Whether for companies taking land or holding it, Mr. Ingram’s volume will be a welcome guide. With this in his hand the legal adviser of a company, or of an owner and occupier whose property is taken, and who demands compensation for it, cannot fail to perform his duty rightly."—Law Times.

"This work appears to be carefully prepared as regards its matter. This edition is a third larger than the first; it contains twice as many cases, and an enlarged index. It was much called for, and doubtless will be found very useful to the practitioner."—Law Magazine, second notice.

Cutler’s Law of Naturalization.

12mo., 3s. 6d. cloth.


"The author's position as Professor of English Law and Jurisprudence is a guarantee of his legal competence, whilst his literary abilities have enabled him to clothe his legal knowledge in language which laymen can understand without being misled by it."—John Bull.

"Mr. Cutler, in the work before us, lucidly explains the state of the law previous to the recent statute, and shows the alterations produced by it, so that a careful perusal of this book will enable the reader fully to comprehend the present state of the law upon this most important subject."—Justice of the Peace.

"This little work will be found of use to our countrymen resident abroad, as well as to foreigners resident in this country."—Public Opinion.

"The book is a model of what a treatise of its kind should be."—Sunday Times.


"To anyone not having much previous acquaintance with the subject, who wishes for a general sketch of the law affecting aliens, as it was, and as it is now, this book will be useful."—Solicitors’ Journal.

"It has been carefully compiled, and the authorities referred to are accurately cited."—Pall Mall Gazette.
Brabrook's Co-operative and Provident Societies.
12mo., 6s. cloth.

THE LAW relating to INDUSTRIAL and PROVIDENT SOCIETIES, including the Winding-up Clauses, with a Practical Introduction, Notes, and Model Rules, to which are added the Law of France on the same subject, and Remarks on Trades Unions. By EDWARD W. BRABROOK, F.S.A., of Lincoln's Inn, Esq., Barrister at Law, Assistant Registrar of Friendly Societies in England.

"It may be usefully consulted by practitioners desirous of learning something more useful upon the subject and is to be recommended in work on partnership and joint stock companies. The book is well written, and we recommend it to those who desire to learn something practical about the work which will be of assistance when engaged in the matter."—Solicitors' Journal.

"Mr. Brabrook's book is one of the kind which is of great practical value and is useful to those interested in the subject. It is full of practical hints."

"It is useful to practitioners and is admirably written."

Rouse's Conveyancer.—3rd Ed. with Supplement to 1871.
Two vols. 8vo., 30s. cloth.

The PRACTICAL CONVEYANCER, giving, in a mode combining facility of reference with general utility, upwards of Four Hundred Precedents of Conveyances, Mortgages and Leases, Settlements, and Miscellaneous Forms, with (not in previous editions) the Law and numerous Outline Forms and Clauses of WILLS and Abstracts of Statutes affecting Real Property, Conveyancing Memoranda, &c. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister at Law, Author of "The Practical Man," &c. Third Edition, greatly enlarged. With a Supplement, giving Abstracts of the Statutory Provisions affecting the Practice in Conveyancing, to the end of 1870; and the requisite Alterations in Forms, with some new Forms; and including a full Abstract in numbered Cases of the Stamp Act, 1870.

THE SUPPLEMENT separately, price 1s. 6d. sewed.

"The best test of the value of a book written professedly for practical men is the practical one of the number of editions through which it passes. The fact that this well-known work has now reached its third shows that it is considered by those for whose convenience it was written as fulfilling its purpose well."—Law Magazine.

"This is the third edition in ten years, a proof that practitioners have used and approved the precedents collected by Mr. Rouse. In this edition, which is greatly enlarged, he has for the first time introduced Precedents of Wills, extending to no less than 115 pages. We can accord unmingled praise to the conveyancing memoranda showing the practical effect of the various statutory provisions in the different parts of a deed. If the two preceding editions have been so well received, the welcome given to this one by the profession will be heartier still."—Law Times.

"So far as a careful perusal of Mr. Rouse's book enables us to judge of its merits, we think that as a collection of precedents of general utility in cases of common occurrence it will be found satisfactorily to stand the application of the test. The draftsman will find in the Practical Conveyancer precedents appropriate to all instruments of common occurrence, and the collection appears to be especially well supplied with those which relate to co-ownership estates. In order to avoid useless repetition and also to make the precedents as simple as possible, Mr. Rouse has sketched out a number of outline drafts so as to present to the reader a sort of bird's-eye view of each instrument and show him its form at a glance. Each paragraph in these outline forms refers, by distinguishing letters and numbers, to the clauses in full required to be inserted in the respective parts of the instrument, and which are arranged in such a part of the work, and thus every precedent in outline is made of itself an index to the clauses which are necessary to complete the draft. In order still further to simplify the arrangement of the work, the author has adopted a plan (which seems to us fully to answer its purpose) of giving the variations which may occur in any instrument according to the natural order of its different parts."—Law Journal.

"That the work has found favor is proved by the fact of our now having to review a third edition. This method of skeleton precedents appears to us to be attended with important advantages. To clerks and other young hands a course of conveyancing under Mr. Rouse's auspices is, we think, calculated to prove very instructive. To the solicitor, especially the country practitioner, who has often to set his clerks to work upon drafts of no particular difficulty to the experienced practitioner, but upon which they the said clerks are not to be quite trusted alone, we think it is a most desirable gentleman Mr. Rouse's collection of Precedents is calculated to prove extremely serviceable. We repeat, in conclusion, that solicitors, especially those practising in the country, will find this a useful work."—Solicitors' Journal.
Mr. Justice Lush's Common Law Practice.—Third Edition by Dixon.

LUSH'S PRACTICE of the SUPERIOR COURTS of COMMON LAW at WESTMINSTER, in Actions and Proceedings over which they have a common Jurisdiction: with Introductory Treatises respecting Parties to Actions; Attorneys and Town Agents, their Qualifications, Rights, Duties, Privileges and Disabilities; the Mode of Suing, whether in Person or by Attorney in Formâ Pauperis, &c. &c. &c.; and an Appendix, containing the authorized Tables of Costs and Fees, Forms of Proceedings and Writs of Execution. Third Edition. By Joseph Dixon, of Lincoln's Inn, Esq., Barrister at Law.

"This is an excellent edition of an excellent work. He has effected a most successful 'restoration.' Altogether, both in what he has omitted and what he has added, Mr. Dixon has been guided by sound discretion. We trust that the great and conscientious labours he has undergone will be rewarded. He has striven to make his work 'thorough,' and because he has done so we take pleasure in heartily recommending it to every member of both branches of the profession."—Solicitors' Journal.

"Lush's Practice is what Tidd's Practice was in our days of clerkship, and what Archbold's Practice was in our early professional days—the practice in general use, and the received authority on the subject. It was written by Mr. Lush when he was only a junior rising into fortune and fame. His practical knowledge, his clearness and industry, were even then acknowledged, and his name secured for his work an immediate popularity, which experience has confirmed and extended. But the work was, in its turn, productive of considerable advantage to the author, it largely increased the number of his clients. When new editions were called for, Mr. Lush was too occupied with briefs to find time for the preparation of books, and hence the association of his name with that of Mr. Dixon as editor, and by whom the new edition has been produced. The index is very copious and complete. Under Mr. Dixon's care Lush's Practice will not merely maintain, it will largely extend its reputation."—Law Times.

"The profession cannot but welcome with the greatest cordiality and pleasure a third edition of their old and much valued friend 'Lush's Practice of the Superior Courts of Law.' Mr. Dixon, in preparing this edition, has gone back to the original work of Mr. Justice Lush, and, as far as the legislative changes and decisions of the last twenty-five years would allow, reproduced it. This adds greatly to the value of this edition, and at the same time speaks volumes for Mr. Dixon's conscientious labour."—Law Journal.
8vo., 3s. 6d. cloth.

THE RULE of the LAW of FIXTURES. By ARCHIBALD BROWN, Esq., of the Middle Temple, Barrister-at-Law.

"We had occasion to notice this treatise whilst it was appearing in the Law Magazine, and the favourable opinion we then formed is confirmed by a perusal of the book, which is furnished with a table of cases bearing on the subject, and which are discussed or referred to by the author."—Law Journal.

"Simple and clear in language and in style, it is none the less logical and supremely technical. We very heartily and honestly commend this volume."—Mechanics' Magazine.

Clifford and Stephens's Practice of Referees Court, 1871.
Vol. I. and Vol. II. Part I., royal 8vo., 38s. cloth.

THE PRACTICE of the COURT of REFEREES on PRIVATE BILLS in PARLIAMENT, with Reports of Cases as to the locus standi of Petitioners during the Sessions 1867-8-9 and 70. By FREDERICK CLIFFORD and PEMBROKE S. STEPHENS, Barristers-at-Law.

"The authors point out in their preface that none of the decisions of 1867 or later years are included in the previous works on the subject. They are accordingly reported in the work before us, arranged in six groups. The history and practice of the subject are detailed tersely and accurately, and in a very intelligible manner, in the treatise. To counsel or agents engaged in parliamentary practice the work will prove extremely serviceable."—Solicitors' Journal.

"The reports, forming the most important part of the volume, are given with fulness and accuracy, so far as we can judge, and are of themselves a sufficient recommendation to the volume."—Law Journal.

"Clifford and Stephens, the authority now universally quoted and relied on in this (Referees) Court."—Daily News.

VOL. II. Part I., containing the Cases decided during the Session 1870, may be had separately, 10s. sewed.

One thick vol. medium 8vo, 42s. cloth.

STARKIE’S TREATISE on the LAW of SLANDER and LIBEL; including MALICIOUS PROSECUTIONS, CONTEMPTS of COURT, &c.; also the Pleading and Evidence, Civil and Criminal, with Forms and Precedents. Third Edition. By H. C. FOLKARD, Barrister-at-Law.

"No one will fail to see that there were ample reasons for a new edition of this valuable work; and upon reference to this edition it will be found that Mr. Folkard has performed his task carefully and well. It is well that such a treatise should have been re-edited, and it is well that it should have been edited by so careful and painstaking a man as Mr. Folkard."—Law Magazine.

"Thirty-nine years have gone by and now Mr. Folkard has brought out a third edition and certainly the first glance of the new book gives the impression of pains unspared. In point of bulk it contains more than twice as much matter as the edition of 1830. With the present volume before them, the law officers of the crown, and lawyers generally, will be saved an infinite amount of labour in search of precedents. No one can say that Mr. Folkard has failed in the full discharge of his onerous duty, and we are sure that he will earn, as he will obtain, the gratitude of the profession."—Law Journal.

"It has been most laboriously executed, and, as far as we have been able to examine, the modern cases, down to the very latest, and to the most obscure, have all been collected, and have, on the whole, been accurately set out. The profession may we think be pretty confident that whatever has been decided upon the law of libel will be found there."—Solicitors' Journal.

"It was requisite that the profession should be supplied with a new edition of this standard work upon the subject, which should bring down the law to the most recent period. It would be difficult to find any part of his subject which Mr. Folkard has not fully investigated, and the result is a valuable addition to the lawyer’s library which for many years has been much needed."—Justice of the Peace.

"This edition is of much greater value than either of the two which preceded it. In conclusion we may do that which is now scarcely necessary, recommend Mr. Folkard’s work to the profession and the public. It is, as now edited, very valuable."—Law Times.
MESSRS. BUTTERWORTH, 7, FLEET STREET, E.C.

CLARK'S DIGEST OF HOUSE OF LORDS CASES.

Royal 8vo., 3ls. 6d. cloth.

A DIGESTED INDEX to all the REPORTS in the HOUSE of LORDS from the commencement of the Series by Dow, in 1814, to the end of the Eleven Volumes of House of Lords Cases, with references to more recent Decisions. By CHARLES CLARK, of the Middle Temple, Esq., Barrister at Law, Reporter by Appointment to the House of Lords.

"The decisions of the supreme tribunal of this country, however authoritative in themselves, were not, until of late years, at all familiar to the great body of the legal profession; the early reports of them, scattered in the hands of but few persons. In that tribunal, more than in any other, questions can be considered, as they have been, upon purely legal principles, freed from the fetters and obstruc-

tions of mere precedent. The acknowledged eminence of the noble and learned persons by whom the decisions have been pronounced, gives them a value beyond their official authoritativeness. It is hoped that this Digest will have the effect of making the profession at large familiarly acquainted with them."—Pref.

ATORY NOTICE.

-------------

BARRY'S PRACTICE OF CONVEYANCING.

8vo. 18s. cloth.

A TREATISE on the PRACTICE of CONVEYANCING.

By W. WHITTAKER BARRY, Esq., of Lincoln's Inn, Barrister at Law, late Holder of the Studentship of the Inns of Court, and Author of "A Treatise on the Statutory Jurisdiction of the Court of Chancery."


"The author of this valuable treatise on conveyancing has most wisely devoted a considerable part of his work to the practical illustration of the working of the recent Statutes on Registration of Title—and for this, as well as for other reasons, we feel bound strongly to recommend it to the practitioner as well as to the student. The author has proved himself to be a master of the subject, for he not only gives a most valuable supply of practical suggestions, but enables them with much ability, and we have no doubt that his criticism will meet with general approval."—Law Magazine.

"The author introduces a work which will be found a very acceptable addition to the law library, and to supply a want which we think has hitherto been felt. It contains, in a concise and readable form, the law relating to almost every point likely to arise in the ordinary every day practice of the conveyancer, with references to the various authorities and statutes to the latest date, and may be described as a manual of practical conveyancing."—Law Journal.

"This treatise supplies a want which has long been felt. There has been no treatise on the Practice of Conveyancing issued for a long time past that is adequate for the present requirements. Mr. Barry's work is essentially what it professes to be, a treatise on the Practice of Conveyancing, in which the theoretical rules of real property law are not sought for the purpose of elucidating the practice. Mr. Barry appears to have a very accurate insight into the practice in every department of real property law, and although we cannot boast, like Duval, of having ever read abstracts of title with pleasure, we have certainly read Mr. Barry's chapter on abstracts and numerous other parts of his work with very consider-

table satisfaction on account of the learning, great familiarity with practice, and power of exposition of his author. The treatise, although capable of compression, is the production of a person of great merit and still greater promise."—Soz's Journal.

"The author's design was to do for the prac-
tice of conveyancing what Mr. Joshua Williams has done for its principles, to describe it simply, clearly and succinctly, recollecting that he was only laying the foundation and not crowning the edifice. A work the substance of which is so well known to our readers, needs no recommenda-
tion from us, for its merits are patent to all, from personal acquaintance with them. The information that the treatise so much admired may now be had in the most convenient form of a book, will suffice of itself to secure a large and eager demand for it."—Law Times.

"The work is clearly and agreeably written, and obly elucidates the subject in hand."—Jus-
tice of the Peace.

"The work is the most important and best trea-
tise on conveyancing that now exists, and the stu-
dent can have no better authority than Mr. Barry to get himself well up in conveyancing. Nor can the legal practitioner, and especially country soli-
citors, find a safer book of reference in practice than Mr. Barry's very valuable treatise."—News of the World.

"We content ourselves with the statement that the present is a work of very great ability. There is no modern work which deals with the same subject, and we have no doubt whatever that this will prove a book of very great value, both to the practitioner and to the student-at-law."—Athenaeum.

"Hunter's Suit in Equity" is an excellent hook for students. It is really an indispensable for the chancery part of the lawyer's education. It is a great excellence of this work, that while making everything clear and giving substantially sufficient information, its writers have been able to strike the happy mean between too great compression and embarrassing exuberance of detail.—Selectors' Journal.

We presume that the continued demand for a volume of so essential utility to students of equity, rather than the necessary incorporation of any new matter, has occasioned the publication of this edition. The alterations and additions to chancery practice and procedure which have been made during the last three years by statute and by general orders of the court are embodied in their proper places in the present edition. In other respects we need pass no encomiums on the work before us, for its standard merit is too well known to require commendation.—Law Journal.

Changes have compelled the recasting of a considerable portion of Mr. Hunter's excellent outline of the proceedings in a suit in equity, which has become a text-book with the law student. This work has been well done by Mr. Lawrence, who has strictly preserved the scheme of the original sketch, while adapting it to the various changes that have been made. All former editions must be at once exchanged for this one.—Law Times.

"As an excellent introduction to the study of chancery practice the book has established its position, and we think the editor has done wisely in merely introducing such amendments as the alteration in the law by statutes and orders requires, and abstaining from any attempt to make it a manual of practice."—Law Magazine.

Lewis's Introduction to Equity Drafting.

Post 8vo., 12s. cloth.

PRINCIPLES OF EQUITY DRAFTING; with an Appendix of Forms. By HUBERT LEWIS, B.A., of the Middle Temple, Barrister at Law; Author of "Principles of Conveyancing," &c.

This Work, intended to explain the general principles of Equity Drafting, as well as to explain the peculiarities of Chancery Court Drafting, is hoped, be useful to lawyers resorting to the New Equity Jurisdiction of the County Courts.

"We have little doubt that this work will soon gain a favorable place in the estimation of the profession. It is written in a clear attractive style, and is plainly the result of much thoughtful and conscientious labour."—Law Magazine and Review.

"Mr. Lewis's work is likely to have a much wider circle of readers than he could have anticipated when he commenced it. No doubt every page will be applicable to County Court Practice, should the bill, in say shape or under any title, be retained in the new jurisdiction. Without it we fear that equity in the County Courts will be a mass of uncertainty,—with it every practitioner must learn the art of equity drafting, and he will find no better teacher than Mr. Lewis."—Law Journal.

"This will, we think, be found a very useful work, not only to students for the bar, but also to practitioners in the County Courts, as anticipated by the author, but also to the equity draftsmen."—Law Journal.

Lewis's Introduction to Conveyancing.

Svo., 18s. cloth.

PRINCIPLES OF CONVEYANCING explained and illustrated by Concise Precedents; with an Appendix on the effect of the Transfer of Land Act in modifying and shortening Conveyances. By HUBERT LEWIS, B.A., late Scholar of Emmanuel College, Cambridge, of the Middle Temple, Barrister at Law.

"The preface arrested our attention, and the examination we have made of the whole treatise has given us (what may be called a new sensation) pleasure in the perusal of a work on Conveyancing. We have, indeed, read it with pleasure and profit, and we may say at once that Mr. Lewis is entitled to a place of having written a very useful, and, at the same time, original work. This will appear from a mere outline of his plan, which very ably worked out. The writer in which his dissertations elucidate his subject, is clear and practical, and his expositions, with the help of his precedents, have the best of all qualities. Mr. Lewis has, whether we consider that the work is deserving of high praise, both for design and execution. It is wholly free from the vice of dryness and dullness, considerable reflection and learning. Mr. Lewis has, at all events, succeeded in producing a work to meet every practitioner's wants, and we have no doubt he will find many grateful readers amongst more advanced, not less than amongst younger, students. In an appendix, devoted to the Land Transfer Act of last session, there are some useful and novel criticisms on its provisions."—Selectors' Journal.

AN ACTION AT LAW: being an Outline of the Jurisdiction of the Superior Courts of Common Law, with an Elementary View of the Proceedings in Actions therein. By ROBERT MALCOLM KERR, Barrister at Law; now Judge of the Sheriff's Court of the City of London. Third Edition.

"There is considerable merit in both works (John William Smith's and Malcolm Kerr's); but the second (Kerr) has rather the advantage."—Jerti.

"Mr. Kerr's book is more full and detailed than that of Mr. John William Smith, and is therefore better adapted for those who desire to obtain not merely a general notion but also a practical acquaintance with Common Law Procedure."— Solicitors' Journal.

Tudor's Leading Cases on Real Property, &c.—2nd Edit.


"The Second Edition is now before us, and we are able to say that the same extensive knowledge and the same laborious industry as have been exhibited by Mr. Tudor on former occasions characterize this later production of his legal authorship; and it is enough at this moment to reiterate an opinion that Mr. Tudor has well maintained the high legal reputation which his standard works have achieved in all countries where the English language is spoken, and the decisions of our Courts are quoted."—Law Magazine and Review.

"The work before us comprises a digest of decisions which, if not exhaustive of all the principles of our real property code, will at least be found to leave nothing untouched or uncalled for under the numerous legal doctrines to which the cases severally relate. To Mr. Tudor's treatment of all subjects, so complicated and so varied, we accord our entire commendation. There are no omissions of any important cases relative to the various branches of the law comprised in the work, nor are there any omissions or defects in his statement of the law itself applicable to the cases discussed by him. We cordially recommend the work to the practitioner and the student alike, but especially to the former."—Solicitors' Journal.

"This and the other volumes of Mr. Tudor are almost a law library in themselves, and we are satisfied that the student would learn more law from the careful reading of them than he would acquire from double the time given to the elaborate treatises which learned professors recommend the student to peruse, with entire forgetfulness that time and brains are limited, and that to do what they advise would be the work of a life. Smith and Mr. Tudor will together give them such a knowledge of law as they could not obtain from a whole library of text books, and of law that will be useful every day, instead of law that they will not want three times in their lives. At this well the practising lawyer might beneficially refresh his memory by a draught, when a leisure hour will permit him to study a leading case. No law library should be without this most useful book."—Law Times.

Benham's Student's Examination Guide.

THE STUDENT'S GUIDE to the PRELIMINARY EXAMINATION for ATTORNEYS and SOLICITORS, and also to the Oxford and Cambridge Local Examinations and the College of Preceptors; to which are added numerous Suggestions and Examination Questions, selected from those asked at the Law Institution. By JAMES ERLE BENHAM, of King's College, London.

"The book is artistically arranged. It will become a useful guide and instructor not only to law students but to every student who is preparing for a preliminary examination."—Law Journal.

"The book is written in a clear and agreeable style, and will no doubt be found useful by the class of readers for whom it is intended."—Law Magazine and Review.

"Mr. Benham has produced a very useful manual. He gives many suggestions on all the subjects of examination and full information thereof."—Law Examination Reporter.

"He has succeeded in producing a book which will doubtless prove useful. The sets of examination papers appear to be judiciously selected and are tolerably full."—Irish Law Times.
Mr. Equity, evidently his well valuable clear a Author We a little Law Leading pursuant authors want. " able, the sure of Mr. on to rapidly work its way to public favor." — North British Mail.

"We cordially wish success to a book which from the care bestowed upon it by two experienced authors can scarcely fail, we should hope, to take a respectable place among the educational works on Roman Law, which seem likely to form a special feature among the legal publications of the present epoch." — Athenaeum.

"A valuable contribution to a kind of literature which English jurists are only now beginning to value at its true worth. Dr. Tomkins and his fellow worker, Mr. H. D. Jencken, have bestowed much labour on their task." — Echo.

"Their work is well arranged and clearly written, and presents in an agreeable and readable form the principles of the great system of Roman Civil Law. It is admirably adapted for the use of students, while the copious references which it contains to the writings of the great jurists upon whose works it is based render it a valuable text-book for the more advanced practitioners." — Irish Law Times.

Latham's Law of Window Lights.
Post 8vo., 10s. cloth.
A TREATISE on the LAW of WINDOW LIGHTS. By FRANCIS LAW LATHAM, of the Inner Temple, Esq., Barrister at Law.

"This is not merely a valuable addition to the law library of the practitioner, it is a book that every law student will read with profit. It exhausts the subject of which it treats." — Law Times.

"His arrangement is logical, and he discusses fully each point of his subject. The work, in our opinion, is both perspicuous and able, and we cannot but compliment the author on it." — Law Journal.

"A treatise on this subject was wanted, and Mr. Latham has succeeded in meeting that want." — Athenaeum.

"Mr. Latham is evidently one of those authors who like to have a complete skeleton of their subject elaborated before putting pen to paper; and the consequence is, that this little work is one which we have much pleasure in recommending to the profession. The sequence of discussion is well ordered, and the author's plan well adhered to; and although the text comprises less than 200 octavo pages, the subject is quite exhaustively treated. To solicitors the volume will, we think, be particularly serviceable. Armed with the work we have now reviewed, the practitioner will be in a fair way to cope successfully with the most exigent client who comes to consult him about his windows." — Solicitors' Journal.

"This subject has acquired a general commercial interest, and a clear concise work upon it is, at this time, very opportune. Mr. Latham's treatise on the Law of Window Lights appears to supply in a convenient form all the information which, in a general way, may be required. The text throughout is lucid and is well supported by precedents." — Building News.

"Mr. Latham has done well in providing a new treatise on the subject, and setting forth some of the more recent decisions of our courts. It is well arranged and clearly written. We recommend the book." — Builder.

Post 8vo., 18s. cloth.
THE LAW OF CHARITABLE TRUSTS; with the Statutes to the end of Session 1870, the Orders, Regulations and Instructions, issued pursuant thereto; and a Selection of Schemes. By OWEN DAVIES TUDOR, Esq., of the Middle Temple, Barrister-at-Law; Author of "Leading Cases in Equity;" "Real Property and Conveyancing;" &c. Second Edition.

"No living writer is more capable than Mr. Tudor of producing such a work as Leading Cases in Equity, and also on the Law of Real Property, have deservedly earned for him the highest reputation as a learned, careful and judicious text-writer. We have only to add that the index is very carefully compiled." — Solicitors' Journal.

"Mr. Tudor's excellent little book on Charitable Trusts. It is in all respects the text-book for the lawyer, as well as a hand-book for reference by trustees and others engaged in the management of charities." — Law Times.
Gaius's Roman Law, by Tomkins and Lemon.

Complete in 1 vol. 8vo., 27s. cloth extra.

(Dedicated by permission to Lord Chancellor Hatherley.)


"We congratulate the authors on the production of a work creditable alike in its inception and its progress. The translation is on the whole satisfactory: the annotations are often valuable and compiled from trustworthy sources."—Law Journal.

"They have done a good service to the study of Roman Law, and deserve the thanks of those who take an interest in legal literature."—Solicitors' Journal.

"After a careful perusal of the present work, we feel bound to speak in the highest terms of the manner in which Mr. Tomkins and Mr. Lemon have executed their task. We have no hesitation in pronouncing the work to be a most valuable contribution to jurisdictional learning, and we unhesitatingly recommend its careful perusal to all students of Roman Law."—Law Magazine.

"The translation is carefully executed, and the annotations show excessive knowledge of the Roman Law."—Athenæum.

"The book is in every respect one of the most valuable contributions, from an English source, to our legal literature which the last half century has witnessed."—Edinburgh Evening Courant.

"The want of an edition of the Commentaries of Gaius for English students has now been supplied by Dr. Tomkins and Mr. Lemon in a manner which leaves nothing to be desired. The translation of the Latin text is excellent, and the notes, upon which the value of the work mainly depends, are full of the most ample learning upon the matter of the text."—Irish Law Times.

"This is the first time that the text of Gaius has been translated into English, and it is remarkably well done by Messrs. Tomkins and Lemon in the part before us, who have also enriched the text by many valuable notes."—Law Examination Reporter.

Phillimore's Commentaries on International Law.

COMMENTARIES on INTERNATIONAL LAW. By the Right Hon. SIR ROBERT PHILLIMORE, Knt., now Judge of the High Court of Admiralty of England.

** Vol. 1, second edition, price 25s., Vol. 2; second edition, price Vol. 3, price 32s., Vol. 4, price 50s., may be had separately to complete sets, or the work may be had complete in four Vols., price cloth.

Extract from Pamphlet on "American Neutrality," by GEORGE BERMIS (Boston, U.S.).—"Sir Robert Phillimore, the present Queen's Advocate, and author of the most comprehensive and systematic Commentary on International Law that England has produced."

"The authority of this work is admittedly great, and the learning and ability displayed in its preparation have been recognized by writers on public law both on the Continent of Europe and in the United States. With this necessarily imperfect sketch we must conclude our notice of the first volume of a work which forms an important contribution to the literature of public law. The book is of great utility, and one which should find a place in the library of every civilian."—Law Magazine.

"We cordially welcome a new edition of Vol. 1. It is a work that ought to be studied by every educated man, and which is of constant use to the public writer and statesman. We wish, indeed, that our public writers would read it more abundantly than they have done, as they would then avoid serious errors in discussing foreign questions. Any general criticism of a book which has been received as a standard work would be superfluous; but we may remark, that whilst Sir Robert strictly ad-
Christie's Crabb's Conveyancing.—Fifth Edit. by Shelford.

Two vols. royal 8vo., 3s. cloth.


* * * This Work, which embraces both the Principles and Practice of Conveyancing, contains likewise every description of Instrument wanted for Commercial Purposes.

General Table of Heads of Prefaces and Forms.


From the Law Times.

"The preparation of it could not have been confided to more able hands than those of Mr. Shelford, the veteran authority on real property law. With the industry that distinguishes him he has done ample justice to his task. In carefulness we have in him a second Crabb, in erudition Crabb's superior; and the result is a work of which the original author would have been proud, could it have appeared under his own auspices. It is not a book to be quoted, nor indeed could its merits be exhibited by quotation. It is essentially a book of practice, which can only be described in rude outline and dismissed with applause, and a recommendation of it to the notice of those for whose service it has been so laboriously compiled."

From the Solicitors' Journal.

"The collection of precedents contained in these two volumes are all that could be desired. They are particularly well adapted for Solicitors, being of a really practical character. They are moreover less in bulk than the former edition, so as to diminish the bulk and expense of some collections that we could name. We know not of any collection of conveying precedents that would make it so possible for a tyro to put together a presentable draft at an exigency, or which are more handy in every respect, even for the experienced draftsman. Mr. Shelford has proved himself in this task to be not unworthy of his former reputation. To those familiar with his other works it will be a sufficient recommendation of this."

From the Law Magazine and Review.

"To this important part of his duty—the modelling and perfecting of the Forms—even with the examination which we have already been able to afford this work, we are able to affirm, that the learned editor has been eminently successful and effected valuable improvements."

From the Law Chronicle.

"It possesses one distinctive feature in devoting more attention than usual in such works to forms of a commercial nature. We are satisfied from an examination of the present with the immediately preceding edition that Mr. Shelford has considerably improved the character of the work, both in the prefaces and in the forms, on the whole the volume of Crabb's Precedents, as edited by Mr. Leonard Shelford, will be found extremely useful in a solicitor's office, presenting a large amount of real property learning, with very numerous precedents: indeed we know not of any book so justly entitled to the appellation of "bonds," as the fifth edition of Mr. Crabb's Precedents,"
Mosely's Articled Clerks' Handy-Book.
12mo., 7s. cloth.

A PRACTICAL HANDY-BOOK OF ELEMENTARY LAW,
designed for the use of Articled Clerks, with a Course of Study and Hints on
Reading for the Intermediate and Final Examinations. By M. S. MOSELY,
Solicitor, Clifford's Inn Prizeman, M. T. 1867.

"This useful little book is intended for the use of
articled clerks during the period of their articles.
The style of this book is peculiar: it is an
exaggeration of the style adopted by Mr. Haynes
in his admirable treatises on Equity. The
author seems to think the adoption of such a
style the only way to make the study of the law
interesting and promote the student's preparation
to say he is wrong."—Law Magazine and Review.

"The design of this little book is to combine
instruction, advice and amusement, if anything
amusing can be extracted from the routine of a
solicitor's office and the studies of articulated clerks.
The book will certainly be found useful by any
articled clerk, for it contains much information
which it is sometimes very troublesome to find,
and the factiousness of Mr. Mosely's editor will
doubtless help to grease the course of a
rough and uneasy subject."—Law Journal.

"There are few who read this book with care
who will not readily admit that on many intricate
points of law their notions have become much
clearer than before their acquaintance with it.
Both practical and philosophical; it will be found
useful, but in the second division of each chap-
ter the law student will find most valuable in-
formation, as there Mr. Mosely has not prepared
to say that is wrong."—Law Magazine.

12mo., 10s. 6d. cloth.

THE COPYHOLD ENFRANCHISEMENT MANUAL,
giving the Law, Practice and Forms in Enfranchisements at Common Law
and under Statute, and in Commutations; with the Values of Enfranchise-
ments from the Lord's various Rights: the Principles of Calculation being
clearly explained, and made practical by numerous Rules, Tables and
Examples. Also all the Copyhold Acts, and several other Statutes and
Notes. Third Edition. By ROSS ROUSE, Esq., of the Middle Temple,
Barrister at Law, Author of "The Practical Conveyancer," &c.

"This new edition follows the plan of its pre-
decessor, adopting a fivefold division:—1. The
Law. 2. The Practice, with Practical Sugges-
tions to Lords, Stewards and Copyholders. 3. The Mathematical
consideration of the Subject in all its Details, with Rules, Tables and
Examples. 4. Forms. 5. The Statutes, with Notes. Of
these, we can only repeat what we have said before,
that they exhaust the subject; they give to the
practitioner all the materials required by him to
conduct the enfranchisement of a copyhold, whe-
ther voluntary or compulsory"—Law Times.

"When we consider what favor Mr. Rouse's
Practical Map and Practical Conveyancer have
found with the profession, we feel sure the legal
world will greet with pleasure a new and im-
proved edition of his copyhold manual. The
third edition of that work is before us. It is a
work of great practical value, suitable to lawyers
and laymen. We can freely and heartily recom-
end this volume to the practitioner, the steward
and the copyholder."—Law Magazine.

"Now, however, that copyhold tenures are
being frequently converted into freeholds, Mr.
Rouse's work will doubtless be productive of
very extensive benefit; for it seems to us to have
been very carefully prepared, exceedingly well
written, and to indicate much ex-
perience in copyhold law on the part of
the author."—Solicitors' Journal.

Shelford's Succession, Probate and Legacy Duties.
12mo., 16s. cloth.

THE LAW relating to the PROBATE, LEGACY and
SUCCESSION DUTIES in ENGLAND, IRELAND and SCOTLAND,
including all the Statutes and the Decisions on those Subjects: with Forms
and Official Regulations. By LEONARD SHELFORD, Esq., of the Middle
Temple, Barrister-at-Law. The Second Edition, with many Alterations and
Additions.

"The book is written mainly for solicitors,
Mr. Shelford has accordingly planned his work
with careful regard to its practical utility and
daily use."—Solicitors' Journal.

"One of the most useful and popular of his
productions, and being now the text book on the
subject nothing remains but to make known its
appearance to our readers. Its merits have been
already tested by most of them."—Law Times.

"On the whole Mr. Shelford's book appears to
us to be the best and most complete work on this
extremely intricate subject."—Law Magazine.


"Two editions of it have been speedily exhausted, and a third called for. The author is an accepted authority on all subjects of this class."—Law Times.

"This is a third and greatly enlarged edition of a book which has already obtained an established reputation as the most complete discussion of the subject adapted to modern times. Since the treatise of Mr. Serjeant Callis in the early part of the 17th century, no work filling the same place has been added to the literature of the Profession. It is a work of no slight labour to digest and arrange this mass of legislation; this task, however, Mr. Serjeant Woolrych has undertaken, and an examination of his book will, we think, convince the most exacting that he has fully succeeded. No one should attempt to meddle with the Law of Sewers without its help."—Soldiers' Journal.

Grant's Law of Corporations in General.

Royal 8vo, 26s. boards.

A PRACTICAL TREATISE on the LAW of CORPORATIONS in GENERAL, as well Aggregate as Sole; including Municipal Corporations; Railway, Banking, Canal, and other Joint-Stock and Trading Bodies; Dean and Chapters; Universities; Colleges; Schools; Hospitals; with quasi Corporations aggregate, as Guardians of the Poor, Churchwardens, Churchwardens and Overseers, etc.; and also Corporations sole, as Bishops, Deans, Canons, Archdeacons, Parsons, etc. By JAMES GRANT, Esq., of the Middle Temple, Barrister at Law.


Complete in One Vol. Royal 8vo., 32s. cloth.

J. CHITTY, JUN.'S. PRECEDENTS in PLEADING; with copious Notes on Practice, Pleading and Evidence. Third Edition. By the late TOMPSON CHITTY, Esq., and by LEOPFRIC TEMPLE, R. G. WILLIAMS, and CHARLES JEFFERY, Esquires, Barristers at Law. (Part 2 may, for the present, be had separately, price 18s. cloth, to complete sets.)

"To enter into detailed criticism and praise of this standard work would be quite out of place. To the present instance the matter has fallen into competent hands, and those who have tried it praise it. This valuable and useful work is brought down to the present time, altered in accordance with the cases and statutes now in force. Great care has been expended by the competent editors, and its usefulness, as heretofore, will be found not to be confined to the chambers of the special pleader, but to be of a more extended character. To close those who have had no recommendation is wanted, to those younger members of the profession who have not that privilege we would suggest that they should at once make its acquaintance."—Law Journal.
Scriven's Law of Copyholds.—5th Ed. by Stalman.
Abridged in 1 vol. royal 8vo., £1 10s. cloth.


"No lawyer can see or hear the word 'copyhold' without associating with it the name of Scriven, whose book has always esteemed not merely the best but the only one of any worth. Until a commutation of the tenure for a fixed rent-charge, after the manner of a tithe commutation, is compiled by the legislature, this treatise will lose none of its usefulness to the solicitors in the country."—Law Times.

"It would be wholly superfluous to offer one word of comment on the general body of the work. Scriven on Copyholds has for exactly half a century been not only a standard work but one of unimpeachable authority, and in its pages the present generation has learned all that is known of copyhold and customary tenures. All that is necessary to say is, that in the present edition of Scriven on Copyholds Mr. Stalman has omitted what it was useless to retain, and lowered what it was necessary to add. Until copyholds have disappeared utterly, it is at least certain that Scriven on Copyholds by Stalman will hold undisputed away in the profession."—Law Journal.

------------------------

Davis's Law of Registration and Elections.
One small 12mo. vol., 15s. cloth.

MANUAL OF THE LAW AND PRACTICE OF ELECTIONS AND REGISTRATION. Comprising all the Statutes, with Notes and Introduction, and a Supplement containing the Cases on Appeal down to 1869, the Rules relating to Election Petitions, and a complete Index to the whole Work. By James Edward Davis, Esq., Barrister at Law, Author of "Manual of Practice and Evidence in the County Courts," &c.

"A work, which, in our judgment, is the handiest and most useful of the several which the Reform Act of 1867 has brought into existence."—Law Magazine.

"We think this the best of the now numerous works on this subject. It has a great advantage in its arrangement over those which are merely new editions of works published before the recent legislation. To read through consecutively, in order to obtain a fair mastery of the whole subject, we have no hesitation in highly recommending this work."—Solicitors' Journal.

"No one comes forward with better credentials than Mr. Davis, and the book before us seems to possess the qualities essential to a guide to a discharge of their duties by the officials. The scheme of Mr. Davis's work is very simple."—Law Journal.

The Supplement may be had separately, price 3s. sewed.

------------------------

Browning's Divorce and Matrimonial Causes Practice.
Post 8vo., 8s. cloth.


------------------------

Brandon's Law of Foreign Attachment.
8vo., 14s. cloth.

A TREATISE upon the CUSTOMARY LAW of FOREIGN ATTACHMENT, and the PRACTICE of the MAYOR'S COURT of the CITY OF LONDON therein. With Forms of Procedure. By Woodthorpe Brandon, Esq., of the Middle Temple, Barrister-at-Law.
Mr. Oke's Magisterial Works.

1.

"The tenth edition of this valuable compendium of magisterial law makes its appearance in two volumes, a great improvement for convenience of reference upon the single bulky volume of the former editions. The position which the work has gained and the growing demand for it are shown by the fact that a ninth edition was published so lately as 1866. In accordance with the suggestion made to Mr. Oke, the present edition has been prepared and issued immediately after the fourth edition of its equally useful companion the Magisterial Formulist. The careful and conscientious treatment which Mr. Oke always bestows upon whatever he takes in hand, entitles him to full credit when he says that 'many titles have been enlarged, much new matter inserted, and a variety of minute improvements made in the references, upon all of which I have bestowed my personal attention and utmost care.'"—Law Magazine.

2.

"This work is too well known to need eulogy. It is in universal use in magistrates' courts; it has been out of print for some time, and a new edition was urgently required. We believe that Mr. Oke purposely delayed it that it might be made contemporaneous, or nearly so, with the Synopsis. The contents are brought down to the end of last year, and consequently it includes all the forms required by the new statutes and decisions of the six years that have elapsed since the publication of the third edition. It is a book that has been known so long, and so extensively, that no further description of it is needed now."—Law Times.

3.

"Mr. Oke's name on a title page is a guarantee for at least a thoroughly practical work. He knows precisely what is wanted, and he supplies it. The arrangement is new and very convenient. It is what it professes to be, a handbook for the sportsman and his legal adviser."—Law Times.

4.
Oke's Law of Turnpike Roads; comprising the whole of the General Acts now in force, including those of 1861; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing contributions from Parishes, &c., practically arranged. With Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c. By George C. Oke. Second Edition. 12mo. 18s. cloth.

"All Mr. Oke's works are well done, and his 'Turnpike Laws' is an admirable specimen of the class of books required for the guidance of magistrates and legal practitioners in country districts."—Solicitors' Journal.
In 2 thick vols. royal 8vo., 63s. cloth.


From the LAW MAGAZINE.
"Though we have not had the opportunity of going conscientiously through the whole of this elaborate compilation, we have been able to devote enough time to it to be able to speak in the highest terms of the judgment and ability with which it has been prepared. Its execution quite justifies the reputation which Mr. Glen has already acquired as a legal writer, and proves that no one could have been more properly singled out for the duty he has so well discharged. The work must take its unquestionable position as the leading Manual of the Railway Law of Great Britain. The cases seem to have been examined, and their effect to be stated with much care and accuracy, and on channels from which information could be gained has been neglected. Mr. Glen, indeed, seems to be saturated with knowledge of his subject. The value of the work is greatly increased by a number of supplemental decisions, which give all the cases up to the time of publication, and by an index which appears to be thoroughly exhaustive."

From the LAW TIMES.
"Mr. Glen has done wisely in preserving that reputation, and, as far as possible, the text of Shelford—though very extensive alterations and additions have been required. But he has a claim of his own. He is a worthy successor of the original author, and possesses much of the same industry, skill in arrangement and accuracy in enumerating the points really decided by cited cases. But we have said enough of a work already so well known. It will have a place out in the library of the lawyer alone. It is a book which every railway office should keep on its shelf for reference."

From the LAW JOURNAL.
"Mr. Glen has mainly confined his work as a superstructure on that of Mr. Leonard Shelford, but he has certainly claims to publish it as a purely independent composition. The work has been as great, and the reward ought to be as complete, as if Mr. Glen had disregarded all his predecessors in the production of treatises on railway law. Since the year 1864 he has been

~

Michael and Shiress Will's Gas and Water Acts.
Post 8vo., cloth.

THE GAS WORKS CLAUSES ACTS, 1847 and 1871; the Gas and Water Facilities Acts, and other Statutes affecting Gas and Water Companies; with Introduction, Notes, Cases, Forms, Orders and a copious Index. By W. H. MICHAEL and J. SHIRESS WILL, Esquires, Barristers at Law.

Glen's Poor Law Orders.—Seventh Edition.
Post 8vo., 21s. cloth.

The GENERAL CONSOLIDATED and other ORDERS of the POOR LAW COMMISSIONERS and the POOR LAW BOARD; with explanatory Notes elucidating the Orders, Tables of Statutes, Cases and Index to the Orders and Cases. By W. C. GLEN, Esq., Barrister at Law. Seventh Edition.
Chadwick's Probate Court Manual.
Royal 8vo., 12s. cloth.

EXAMPLES of ADMINISTRATION BONDS for the COURT of PROBATE; exhibiting the Principle of various Grants of Administration, and the correct Mode of preparing the Bonds in respect thereof; also Directions for preparing the Oaths, arranged for practical utility. With Extracts from the Statutes; also various Forms of Affirmation prescribed by Acts of Parliament, and a Supplemental Notice, bringing the work down to 1885. By SAMUEL CHADWICK, of Her Majesty's Court of Probate.

"We undertake to say that the possession of this volume by practitioners will prevent many a hitch and awkward delay, provoking to the lawyer himself and difficult to be satisfactorily explained to the clients."—Law Magazine and Review.

"Mr. Chadwick's volume will be a necessary part of the law library of the practitioner, for he has collected precedents that are in constant requirement. This is purely a book of practice, but therefore the more valuable. It tells the reader what to do, and that is the information most required after a lawyer begins to practise."—Law Times.

8vo. 21s. cloth.


"The present editor has very much increased the value of the original work, a work whose sterling merits had already raised it to the rank of a standard text-book."—Law Magazine.

"No man in the profession was more competent to treat the subject of Banking than Mr. Grant. This volume appears opportunely. To all engaged in the litigations, as well as to all legal advisers of Bankers, Mr. Grant's work will be an invaluable assistant. It is a clear and careful treatise on a subject not already exhausted, and it must become the text-book upon it."—Law Times.

"A Second Edition of Mr. Grant's well-known treatise on this branch of the law has been called for and very ably supplied by Mr. Fisher."—Law Times, Second Notice.

"The learning and industry which were so conspicuous in Mr. Grant's former work are equally apparent in this. The book supplies a real want, which has long been felt both by the profession and by the public at large."—Jurist.

"We commend this work to our readers. It is at once practical and intelligible, and is of use alike to the unprofessional as well as the professional reader. No bank, whether a private concern or a joint-stock company, should be without it."—Money Market Review.

Parkinson's Common Law Chamber Practice.
12mo., 7s. cloth.

A HANDY BOOK FOR THE COMMON LAW JUDGES' CHAMBERS. By GEO. H. PARKINSON, Chamber Clerk to the Hon. Mr. Justice Byles.

"For this work Mr. Parkinson is eminently qualified."—Jurist.

"It is extremely well calculated for the purpose for which it is intended. So much work is now done in Common Law Chambers by junior clerks that such a little treatise is much wanted. Mr. Parkinson has performed his task skilfully and with ease."—Solicitors Journal.

"The practice in Chambers has become sufficiently important to call for a treatise devoted to it, nor could a more competent man for the task have presented himself than Mr. Parkinson, whose great experience as well as intelligence have long placed him in the position of an authority on all matters appertaining to this peculiar but very extensive branch of Common Law Practice."—Law Times.

"There is much that would prove very useful to the practitioner in Mr. Parkinson's compilation, and which, so far as we are aware, is not to be found in any other book collected with equal conciseness."—Law Magazine and Review.
Bulley and Bund's Bankruptcy Manual: with Supplement.  
12mo., 16s. cloth.

A MANUAL of the LAW and PRACTICE of BANKRUPTCY asAmended and Consolidated by the Statutes of 1869; with an APPENDIX containing the Statutes, Orders and Forms. By John F. Bulley, B.A., of the Inner Temple, Esq., Barrister at Law, and J. W. Willis-Bund, M.A., LL.B., of Lincoln's Inn, Esq., Barrister at Law. With Supplement, including the Orders to 30th April, 1870.

The SUPPLEMENT may be had separately, 1s. sewed.

Coombs' Manual of Solicitors' Bookkeeping.  
8vo., 10s. 6d. cloth.

A MANUAL of SOLICITORS' BOOKKEEPING: comprising Practical Exemplifications of a Concise and Simple Plan of Double Entry, with Forms of Account and other Books relating to Bills, Cash, &c., showing their Operation, giving Instructions for Keeping, Posting and Balancing them, and Directions for Drawing Costs, adapted to a large or small, sole or partnership business. By W. B. Coombs, Law Accountant and Costs Draftsman.

•• The various Account Books described in the above System, the forms of which are copyright, may be had from the Publishers at the prices stated in the work, page 274.

"It adds some excellent instructions for drawing bills of costs. Mr. Coombs is a practical man, and has produced a practical book."—Law Times.

"A work in which the really superficial has been omitted, and that only which is necessary and useful in the ordinary routine in an attorney's office has been retained. He has performed his task in a masterly manner, and in doing so has given the why and the wherefore of the whole system of Solicitors' Bookkeeping. The volume is the most comprehensive we remember to have seen on the subject, and from the clear and intelligible manner in which the whole has been worked out it will render it unexceptionable in the hands of the student and the practitioner."—Law Magazine.

"So clear do the instructions appear, that a tyro of average skill and abilities, with application, could under ordinary circumstances open and keep the accounts of a business; and, so far as we can judge, the author has succeeded in his endeavour to divest Solicitors' Bookkeeping of complexity, and to be concise and simple, without being inefficient."—Law Journal.

"This is not merely a valuable addition to the library of every solicitor, it is a book that every articled clerk, now that intermediate examinations embrace bookkeeping, will be read with profit and benefit to himself. It may be fairly said to exhaust the subject of which it treats."—Solicitors' Journal.

"Mr. Coombs' Manual of Solicitors' Bookkeeping, in our opinion, takes the safe middle course, between too great intricacy of arrangement on one side, and want of detail and explanation on the other. His system can be equally followed in a small office, where a regular accountant is not employed, and in an office where the staff is large. Solicitors who manage property will find the specimens of rental accounts given in the Appendix very useful."—Irish Law Times.

"This is a work of considerable extent, prepared at the request of eminent solicitors, by an experienced law accountant."—Athenæum.

Lushington's Naval Prize Law.  
Royal 8vo., 10s. 6d. cloth.

A MANUAL of NAVAL PRIZE LAW. By Godfrey Lushington, of the Inner Temple, Esq., Barrister at Law.

Lovesy's Law of Arbitration (Masters and Workmen).  
12mo. 4s. cloth.

(Dedicated, by permission, to Lord St. Leondards.)

THE LAW of ARBITRATION between MASTERS and WORKMEN, as founded upon the Councils of Conciliation Act of 1867 (30 & 31 Vict. c. 105), the Masters and Workmen Act (5 Geo. 4, c. 96), and other Acts, with an Introduction and Notes. By C. W. Lovesy, Esq., of the Middle Temple, Barrister at Law.
Trower's Church Building Laws.

Post 8vo. 8s. cloth.


"We may pronounce it a useful work. It contains a great mass of information of essential import, and those who, as parishioners, legal advisers, or clergymen, are concerned with glebes, endowments, district chaplainies, parishes, ecclesiastical commissions, and such like matters, about which the public, and notably the clerical public, seem to know but little, but which it is needless to say are matters of much importance."—Solicitors' Journal.

Field's Law Relating to Curates, &c.

Post 8vo., 6s. cloth.

The LAW RELATING to PROTESTANT CURATES and the RESIDENCE of INCUMBENTS or their BENEFICES in ENGLAND and IRELAND. By C. D. FIELD, M.A., LL.D., late Scholar of Trin. Coll. Dublin, and now of H. M.'s Bengal Civil Service; recently Judge of the Principal Court of Small Causes at Kishnagur; and Registrar of H. M.'s High Court of Judicature at Fort William in Bengal; Author of "The Law of Evidence in India," &c.

"A clear and concise exposition of a branch of the law not often brought under the notice of solicitors, but of considerable interest to the clergy."—Law Times.

"At all events curates now have no ground of complaint, because the treatise before us is a very intelligible and tolerably full exposition of the law with which they are immediately concerned."—Law Journal.

"Dr. Field is accurate, so far as we can judge, and has completed his self-adopted task satisfactorily. The vast number of statutes bearing upon the law of Curates renders a legal guide necessary, and also the many decisions on their interests. Dr. Field has done his work judiciously, and a copious index renders the results of his labours readily available to others."—St. James's Chronicle.

Petersdorff's Abridgment of the Common Law.—New Ed.

7 vols., with Supplement, Royal 8vo., complete to the year 1870, 8s. cloth.

A CONCISE, PRACTICAL ABRIDGMENT of the COMMON AND STATUTE LAW, as at present administered in the Common Law, Probate, Divorce and Admiralty Courts, excluding all that is obsolete, overruled or superseded: comprising a Series of Condensed Treatises on the different Branches of the Law, with detailed Directions, Forms and Precedents; an Alphabetical Dictionary of Technical Law Terms and Maxims, and a Collection of Words that have received a Special Judicial Construction; the whole illustrated by References to the principal Cases in Equity, and in the Scotch, American and Irish Reports, and the most eminent text writers. By CHARLES PETERSDORFF, Serjeant-at-Law, assisted by CHARLES W. WOOD, Esq., and WALKER MARSHALL, Esq., Barristers-at-Law.

The SUPPLEMENT, 1863 to 1870, as a separate work, 1 vol. Royal 8vo., 25s. cloth.
Robson's Law and Practice in Bankruptcy.

8vo., 30s. cloth.

A COMPLETE TREATISE on the LAW OF BANKRUPTCY, containing a full exposition of the Principles and Practice of the Bankruptcy Law, including the alterations made by the Bankruptcy Act, 1869; with a copious Index, and an Appendix containing the Bankruptcy Acts, and the General Rules and Orders. By GEORGE YOUNG ROBSON, of the Inner Temple, Esq., Barrister at Law.

"The work before us is a very elaborate treatise, and calls for warm commendation. We congratulate Mr. Robson in succeeding in a work which demands talent, tact and industry. Indeed, the work is a model of handi- ness and lucidity. The author has left nothing undone to render his work complete. It is not often that we can accord so much praise to a book; but we are sure that no one who consults Mr. Robson's work will say that our commendation is undeserved."—Law Journal.

"This work is, as its title asserts, a Treatise on the Law of Bankruptcy. Instead of following the orthodoxy plan of giving us the sections of the act with notes in microscopic type, in which are collected with an infinite expenditure of labour extracts from every case bearing directly or remotely on the subject, we have here a distinct attempt to discover the principles in accordance with which the law has been built. This method has peculiar advantages to recommend it to the practitioner. It gives him a grasp of his subject with which no mere summary of cases and text will supply him. An attempt to deal with the subject in this form, is peculiarly valuable. We have great pleasure in giving it the warmest recommendation to our readers."—Law Magazine.


One very thick volume, 8vo., 35s. cloth.

A TREATISE on the LAW, PRIVILEGES, PROCEEDINGS AND USAGE of PARLIAMENT. By Sir THOMAS ERKINSE MAY, K.C.B., of the Middle Temple, Barrister at Law; Clerk of the House of Commons. Sixth Edition, Revised and Enlarged.

Sir T. Erskine May deserves the best thanks of all who are interested in parliamentary proceedings, for the care and attention he has bestowed in preparing this edition of his valuable work."—Law Magazine.

"We hail with satisfaction a new edition of this admirable work. The politician, the lawyer, the parliamentary agent and the educated gentleman, will find here a teacher, a guide, a digest of practice and a pleasing companion. To legal readers, the first portion of this work is of the most value. We may advert to the great care with which the author has noted up and incorporated in this new edition all the changes and events of importance since the publication of the fifth edition."—Law Journal.

"Six editions in twenty-four years attest the estimation in which this great work is held by the members of successive Parliaments, by the promoters of private bills, and by constitutional lawyers. It is an exhaustive treatise on that most lawless of all law the Law of Parliament."—Law Times.

"Perhaps no work has achieved a greater reputation among lawyers than May's Parliamentary Practice. Since the first publication in 1844, a succession of editions have been called for, and now, after an interval of four years since the issue of the fifth, a sixth edition has been found necessary. The work is too well-known to need the repetition of any description of its scope."—Soldiers' Journal.

"His well-known treatise on the 'Law and Usage of Parliament' at once placed him upon a level with Hatsell, and is now the recognized text-book, not in England only, but in her colonies, and wherever parliamentary government exists. It may almost be said to be better known at Australia than at Westminster, as the practice of colonial legislatures is less settled than our own, and our countrymen at the Antipodes are more combative than ourselves upon the points of order and procedure. In Germany it has been translated for the use of the Prussian and North German Parliaments, and we have found it in a book-seller's shop at Pesth, in the Hungarian language, under the name of 'May Erskine Tamás.'"—Times.

Drewry's Equity Pleader.

12mo., 6s. cloth.

A CONCISE TREATISE on the PRINCIPLES of EQUITY PLEADING; with Precedents. By C. STEWART DREWRY, of the Inner Temple, Esq., Barrister at Law.

"It will be found of great utility as introductory to the more elaborate treatises, or to refresh the memory after the study of the larger books."—Law Times.
Post 8vo., 20s. cloth.


"Altogether we may confidently venture to confirm the statement in the preface that it may now fairly claim to be recognized as a standard authority on the law of highways by those who are engaged officially or otherwise in the administration of that branch of the law. It is so as we from personal knowledge can affirm, and, we may add, that it is rejoiced by them as a trustworthy guide in the discharge of their onerous duties."—Law Times.

"The present edition of Mr. Glen's work contains a great deal of valuable matter which is entirely new. To those interested in the law of highways this manual as it now appears will be found a safe and efficient guide."—Law Magazine.

"Mr. Glen has an established reputation in the legal profession as a careful and laborious writer, and this new edition of his work on highways law will convince those who refer to it that he has treated the subject as likely to be useful to those whose duties require them to have a knowledge of this particular branch of the law. This work aspires above others which profess merely to be annotated reprints of acts of parliament. It will be found a source of much information which might be looked for elsewhere in vain. The general law upon the subject is set forth with a care and lucidity deserving of great praise, and a good index facilitates reference, and renders this work the most complete on this important subject which has yet been published."—Justice of the Peace.

"Mr. Glen may well say that an entire revision of the first edition was necessitated by the recent statutes, and his second edition is a bulky volume of 800 pages. His work may be read with satisfaction by the general student as well as referred to with confidence by the practitioner. We need say nothing farther of this second edition than that we think it likely to maintain fully the reputation obtained by its predecessor. It has the advantages, by no means unworthy of consideration, of being well printed and well indexed, as well as accurately arranged, and a copious index of statutes renders it a perfect compendium of the authorities bearing in any way upon the law of highways."—Selectors' Journal.

------------

Fry's Specific Performance of Contracts.
8vo., 16s. cloth.

A TREATISE on the SPECIFIC PERFORMANCE of CONTRACTS, including those of Public Companies, with a Preliminary Chapter on the Provisions of the Chancery Amendment Act, 1858. By Edward Fry, B.A., of Lincoln's Inn, Esq., Barrister at Law.

"It will be seen what a masterly grasp the author has taken of his subject, and his treatment of the various parts of it equally exhibits the hand of a man who has studied the law as science. He is skilful in the extraction of principles, precise in the exposition of them, apt in their application to a map which has not been studied in all its thorough practical. The practitioner who uses it as a text-book will find in it an adviser who will tell him precisely what the law is, but how it may be enforced."—Law Times.

"Mr. Fry's work presents in a reasonable compass a large quantity of modern learning on the subject of contracts, with reference to the common remedy by specific performance, and will thus be acceptable to the profession generally."—Law Chronicle.

"There is a closeness and clearness in its style, and a latent fulness in the exposition, which out only argues a knowledge of the law, but of those varying circumstances in human society to which the law has to be applied."—Spectator.

"Mr. Fry's elaborate essay appears to exhaust the subject, on which he has cited and brought to bear, with great diligence, some 1,500 cases, and which includes those of the latest reports."—Law Magazine and Review.

"Although a professional work, it is sufficiently popular in style, which makes it serviceable to all persons engaged in commercial or joint-stock undertakings."—The Times.

"The law of specific performance is a growing law just now, and the characteristic which gives its special value to Mr. Fry's work is, that the recent cases are as well digested in his mind as the older ones. Mr. Fry is one of the best specimens of the modern law book."—The Economist.

------------

Phillips's Law of Lunacy.
Post 8vo., 18s. cloth.

THE LAW CONCERNING LUNATICS, IDIOTS and PERSONS OF UNSOUND MIND. By Charles Palmer Phillips, M.A., of Lincoln's Inn, Esq., Barrister at Law, and Secretary to the Commissioners of Lunacy.

"Mr. C. P. Phillips has in his very complete, elaborate and useful volume presented us with an excellent view of the present law as well as the practice relating to lunacy."—Law Magazine and Review.

"The work is one on which the author has evidently bestowed great pains, and which not only bears the mark of great application and research, but which cannot fail to be of the highest service to all persons concerned in this branch of the subject."—Justice of the Peace.
Butt on Compensation under the Irish Land Act, 1870.
Royal 8vo., 25s. cloth.

A PRACTICAL TREATISE on the NEW LAW of COMPENSATION to TENANTS, and the other Provisions of the Landlord and Tenant Act, 1870; with an Appendix of Statutes and Rules, and a Chapter on the recent Judgment in the Court of Appeal in Chancery. By ISAAC BUTT, Esq., of the Inner Temple, Barrister at Law, one of Her Majesty's Counsel in Ireland.

"It is no small praise to say that this elaborate work is worthy of the high reputation of Mr. Butt, and yet that commendation would not fairly set forth the merit of a treatise which cannot fail to vastly enhance the reputation of its author. To those who are concerned in the working of the act this book will be simply indispensable, and it is hardly going too far to assert that it will give a tone to the interpretation of the law."—Law Journal.

Brandon’s Mayor’s Court Practice.
8vo., 3s. 6d. cloth.

EPITOME of the NOTES of PRACTICE of the MAYOR’S COURT PRACTICE of the CITY of LONDON in ordinary Actions. By WOODTHORPE BRANDON, Esq., Barrister at Law.

8vo.; 30s. cloth.

The LAW relating to PUBLIC HEALTH and LOCAL GOVERNMENT, including the Law relating to the Removal of Nuisances injurious to Health, the Prevention of Diseases, and Sewer Authorities; with the Statutes and Cases. By W. CUNNINGHAM GLEN, of the Middle Temple, Esq., Barrister at Law.

Smith’s Practice of Conveyancing.
Post 8vo., 6s. cloth.

AN ELEMENTARY VIEW of the PRACTICE of CONVEYANCING in SOLICITORS’ OFFICES; with an Outline of the Proceedings under the Transfer of Land and Declaration of Title Acts, 1862, for the use of Articled Clerks. By EDMUND SMITH, B.A., late of Pembroke College, Cambridge. Attorney and Solicitor.

Wills on Circumstantial Evidence.—Fourth Edition.
8vo., 10s. cloth.

AN ESSAY on the PRINCIPLES of CIRCUMSTANTIAL EVIDENCE. Illustrated by numerous Cases. By the late WILLIAM WILLS, Esq. Fourth Edition, edited by his Son, ALFRED WILLS, Esq., Barrister at Law.
Powell on Evidence.—Third Edition by Cutler & Griffin. 12mo., 16s. cloth.

THE PRINCIPLES and PRACTICE of the LAW of EVIDENCE. By EDMUND POWELL, M.A., of the Inner Temple, Barrister at Law. Third Edition by JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London; and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister at Law. To which is added a SUPPLEMENT containing the alterations in the Law of Evidence to Michaelmas, 1869.

The Supplement may be had separately price Is. sewed.

"We have very great pleasure in noticing this edition of a work with which we have long been familiar. It was certainly a good idea to make the book useful to the equity practitioner. It was a still better idea to adapt the Anglo-Indian rules of evidence, which must assist materially those who are studying in England for the Indian bar, or preparing for the Indian civil service. Mr. Cutler, being Professor of Indian Jurisprudence at King's College, has executed this latter branch of the work with the ability which was to be expected from him, and we can heartily recommend this excellent edition of Mr. Powell's book as likely to prove of very wide utility."—Law Times.

"To put before students in an attractive and concise form the principles of the law of evidence the authors have achieved a success. The treatise before us has with great care and skill incorporated the principles of evidence observed in equity, and also the salient rules adopted in the Anglo-Indian courts. While we think that the sphere of this treatise must be confined to the education of students, we have no hesitation in asserting that within that sphere the book is a great success, and we cordially recommend the volume to students both for the English bar and for the Indian bar. Its simplicity and perspicuity render it also a valuable aid to members of the Indian civil service."—Law Journal.

"This is a new edition of a work which we fancy has scarcely been as well known as it deserves. It has not of course the pretensions to completeness of Mr. Pitt Taylor's book, nor possibly has it so much merit as an original and scientific treatise as Mr. Best's, at the same time it is probably more useful than either for ready reference in court on ordinary points. The present volume is of handy size, is moderately cheap, and its contents are remarkably well arranged, so that anything it contains can be rapidly found. We think this will be enough to make the work useful to practitioners on circuit, at quarter sessions, and especially in county courts where access to a library is not usually to be had and it is inconvenient or impossible to take many or large books. To students, and young barristers also the book will be useful, not only for reading at home, as more practical than Best and less detailed than Taylor, but also for taking with them into court."—Solicitors' Journal.

"This is a good edition of a very useful work. The book itself we have always considered as well adapted for the student and convenient for the practitioner. It explains principles clearly, and illustrates them without overloading them by the cases quoted. The work is more practical in its object than that of Mr. Best, and treats the subject in a more succinct manner than Mr. Pitt Taylor. There could be no better introduction to the study of the law of evidence than Mr. Powell's book, whilst it is perfectly suitable for ordinary reference, and the care that has been bestowed on it by the present editors will, we think, considerably enhance its value. The law has been brought down to the close of last year, and the principles of the law of evidence followed by the Court of Chancery have been incorporated in the work, and the rules of evidence adopted by the Anglo-Indian courts have been referred to, the chief part of the Indian Evidence Act being in the appendix. This last feature of the work will render it very valuable for those who are studying for the Indian civil service, and will not be without interest for all who wish to understand thoroughly the principles of the law of evidence."—Law Magazine and Review.

* * * Although in this work the most important decisions only are quoted, and as a rule but one authority is given for each proposition, yet there are upwards of 400 cases cited (herein which do not appear in the Table of Cases prefixed to the latest edition of "Taylor on Evidence.

Holland on the Form of the Law.

ESSAYS upon the FORM of the LAW. By THOMAS ERSKINE HOLLAND, M.A., Fellow of Exeter College, Oxford, and of Lincoln's Inn, Barrister at Law.

"A work of great ability."—Atheneum.

"Entitled to very high commendation."—Law Times.

"The essays of an author so well qualified to write upon the subject."—Law Journal.

"We can confidently recommend these essays to our readers."—Law Magazine.

"A work in which the whole matter is easily intelligible to the lay as well as the professional public."—Saturday Review.

"Mr. Holland's extremely valuable and ingenious essays."—Spectator.
Wigram on Extrinsic Evidence as to Wills.

Fourth Edition. 8vo., 11s. cloth.


"In the celebrated treatise of Sir James Wigram, the rules of law are stated, discussed and explained in a manner which has excited the admiration of every judge who has had to consult it."—Lord Kinross, in a Privy Council Judgment, July 8th, 1558.

Williams’s Common Law Pleading and Practice.

8vo., 12s. cloth.

An INTRODUCTION to PRACTICE and PLEADING in the SUPERIOR COURTS of LAW, embracing an outline of the whole proceedings in an Action at Law, on Motion, and at Judges’ Chambers; together with the Rules of Pleading and Practice, and Forms of all the principal Proceedings. By Watkin Williams, Esq., M.P., of the Inner Temple, Barrister at Law.

"For the Student especially the book has features of peculiar value, it is at the same time scientific and practical, and throughout the work there is a judicious union of general principles with a practical treatment of the subject, illustrated by forms and examples of the main proceedings."—Lister.


8vo., 30s. cloth.

A TREATISE on the LAW of MINES and MINERALS. By William Bainbridge, Esq., F.G.S., of the Inner Temple, Barrister at Law. Third Edition, carefully revised, and much enlarged by additional matter relating to manorial rights—rights of way and water and other mining easements—the sale of mines and shares—the construction of leases—cost book and general partnerships—injuries from undermining and inundations—barriers and working out of bounds. With an Appendix of Forms and Customs and a Glossary of English Mining Terms.

"When a work has reached three editions, criticism as to its practical value is superfluous. We believe that this work was the first published in England on the special subject of mining law—others have since been published—but we see no reason in looking at the volume before us to believe that it has yet been superseded."—Law Magazine.

"Mr. Bainbridge was we believe the first to collect and publish, in a separate treatise, the Law of Mines and Minerals, and the work was so well done that his volume at once took its place in the law library as the text book on the subject to which it was devoted. This work must be already familiar to all readers whose practice brings them in any manner in connection with mines or mining, and they well know its value. We can only say of this new edition that it is in all respects worthy of its predecessors."—Law Times.

"After an interval of eleven years we have to welcome a new edition of Mr. Bainbridge’s work on mines and minerals. It would be entirely superfluous to attempt a general review of a work which has for so long a period occupied the position of the standard work on this important subject. Those only who, by the nature of their practice, have learned to lean upon Mr. Bainbridge as on a solid staff, can appreciate the deep research, the admirable method, and the graceful style of this model treatise. Therefore we are merely reduced to the inquiry, whether the law has, by force of statutes and of judicial decisions, undergone such development, modification, or change since the year 1856 as to justify a new edition? That question may be readily answered in the affirmative, and the additions and corrections made in the volume before us furnish ample evidence of the fact. It may be also stated that this book, being priced at 30s., has the exceptional character of being a cheap law publication."—Law Journal.
Field's Table of, and Index to, Indian Statute Law.
Demy 8to., 42s. cloth.
A CHRONOLOGICAL TABLE of and INDEX to the INDIAN STATUTE-BOOK from the Year 1834, with a General Introduction to the Statute Law of India. By C. D. Field, M.A., LL.D., of the Inner Temple, Barrister at Law, and of H.M.'s Bengal Civil Service.

"Mr. Field has produced a work which will be extremely useful, not only to the profession in India, but to those practising in the Privy Council at home."—Solicitors' Journal.

Cutler and Griffin's Indian Criminal Law.
8vo. 6s. cloth.
AN ANALYSIS of the INDIAN PENAL CODE (including the Indian Penal Code Amendment Act, 1870), with Notes. By John Cutler, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London, and Edmund Fuller Griffin, B.A., of Lincoln's Inn, Barrister at Law.

"It may be added that the code is just at present out of print, so that the production of an analysis at the present moment is especially opportune. Messrs. Cutler and Griffin have produced a useful little book, and produced it at a time when it will be especially useful."—Solicitors' Journal.

"This analysis of the Indian Penal Code seems to have conferred a great boon on the Indian practitioner, and will doubtless be of use to professional men in England. It has a good index."—Law Magazine.

"This is a work intended for students and for practitioners in India. Knowing how well the same authors edited the Indian portion of Powell on Evidence, we should be content to take it on the faith of their reputation only. The mode of analysis is very clear and brings well forward the prominent features of the code."—Law Times.

Davis's Criminal Law Consolidation Acts.
12mo., 10s. cloth.
THE NEW CRIMINAL LAW CONSOLIDATION ACTS, 1861; with an Introduction and practical Notes, illustrated by a copious reference to Cases decided by the Court of Criminal Appeal. Together with alphabetical Tables of Offences, as well as punishable under Summary Conviction as under Indictment, and including the Offences under the New Bankruptcy Act, so arranged as to present at a view the particular Offence, the Old or New Statute upon which it is founded, and the Limits of Punishment; and a full Index. By James Edward Davis, Esq., Barrister-at-Law.

8vo., 1st. cloth.

"Mr Powell's writing is singularly precise and condenced, without being at all dry, as those who have read his admirable Book of Evidence will attest. It will be seen, from our outline of the contents, how exhaustively the subject has been treated, and that it is entitled to be, that which it aspires to become, the text book on the Law of Carriers."—Law Times.

"The two chapters on the Railway and Canal Traffic Act, 1856, are quite new, and the recent cases under the provisions of that statute are analyzed in lucid language."—Law Magazine.

Smith's Bar Education.
8vo., 9s. cloth.
A HISTORY of EDUCATION for the ENGLISH BAR, with SUGGESTIONS as to SUBJECTS and METHODS of STUDY. By Philip Anstie Smith, Esq., M.A., LL.B., Barrister-at-Law.

A Letter to the Right Hon. the Lord High Chancellor concerning Digests and Codes. By William Richard Fisher, of Lincoln's Inn, Esq., Barrister at Law. Royal 8vo. 1s. sewed.

Indian Civil Service Examinations. On reporting Cases for the Periodical Examinations by Selected Candidates for the Civil Service of India: Being a Lecture delivered on Wednesday, June 12, 1867, at King's College, London. By John Cutler, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence and Professor of Indian Jurisprudence at King's College, London. 8vo., 1s. sewed.

Cutler's Voluntary and other Settlements, including the 91st section of the Bankruptcy Act, 1869. By John Cutler, B.A., of Lincoln's Inn, Esq., Barrister at Law. 8vo. 3s. cloth.

Hamel's International Law, in connexion with Municipal Statutes relating to the Commerce, Rights and Liabilities of the Subjects of Neutral States pending Foreign War; considered with reference to the Case of the Alexandra, seized under the provisions of the Foreign Enlistment Act. By Felix Hargrave Hamel, Barrister at Law. Post 8vo. 3s. boards.

Francillon's Lectures, Elementary and Familiar, on English Law. First and Second Series. By James Francillon, Esq., County Court Judge. 2 vols. 8vo. 8s. each cloth.

Pearce's Guide to the Inns of Court and Chancery; with Notices of their Ancient Discipline, Customs and Entertainments; an Account of the Eminent Men of Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn, &c.; together with the Regulations as to the Admission of Students, Keeping Terms, Call to the Bar, &c. By Robert R. Pearce, Esq., Barrister at Law. 8vo. 8s. cloth.

The Laws of Barbados. (By Authority.) Royal 8vo. 21s. cloth.


Finlason's Dissertation on the History of Hereditary Dignities, particularly as to the Course of Descent and their Forfeiture by Attainder, with special reference to the Case of the Earldom of Wiltes. By W. F. Finlason, Esq., Barrister at Law, Editor of "Reeve's History of the English Law." 8vo. 5s. cloth.

"As an inquiry into an important question of peerage law it cannot fail to have much interest for not a few readers."—Law Magazine.

"Mr. Finlason discusses very carefully the modes in which dignities may be forfeited. We heartily recommend it as a pleasant study to laymen and lawyers."—Law Times.


The South Australian System of Conveyancing by Registration of Title. By Robert R. Torrens and Henry Gawler, Esq., Barrister, 8vo., 4s. half cloth.

Elements of the Logical and Experimental Sciences considered in their relation to the Practice of the Law. 8vo. 14s. boards.
The Practice of the Ecclesiastical Courts, with Forms and Tables of Costs. By H. C. Cooté, F.S.A., Proctor in Doctors' Commons, &c. 8vo. 28s. boards.

Baker's Compendium of the Statutes, Cases and Decisions affecting the Office of Coroner. By William Baker, Coroner of Middlesex. 12mo. 7s. cloth.

Greening's Forms of Declarations, Pleadings and other Proceedings in the Superior Courts of Common Law, with the Common Law Procedure Act, and other Statutes; Table of Officers' Fees; and the New Rules of Practice and Pleading, with Notes. By Henry Greening, Esq., Special Pleader. Second Edition. 12mo. 10s. 6d. boards.

Bowditch's Treatise on the History, Revenue Laws, and Government of the Isles of Jersey and Guernsey, to which is added the recent Acts as to Smuggling, Customs and Trade of the Isle of Man and the Channel Islands, Forms, Costs, &c. By J. Bowditch, Solicitor. 8vo. 3s. 6d. sewed.


Gurney's System of Short Hand. By Thomas Gurney. First published in 1740, and subsequently improved. 17th Edition. 12mo. 3s. 6d. cloth.

"Gurney's is, we believe, admitted to be the best of the many systems, and a seventeenth edition appears to attest that fact."—Law Times.

"We may remark that it has been published for 150 years; that it has for 60 years been officially used in the Houses of Parliament; and that 17 editions of the work have been issued."—Law Journal.

"The editor of the present work is Mr. Thomas Gurney, who, with his brother, Mr. Joseph Gurney, is shorthand writer to the Houses of Lords and Commons. These gentlemen are the sons of the late W. B. Gurney, who again was the son of Mr. Thomas Gurney, who received the appointment more than a century ago, and in whose family it has remained ever since. The Messrs. Gurney employ a very large staff, who, of course, write the shorthand taught in the little treatise before us."—Solicitors' Journal.

"The chief merit that it has is extreme simplicity."—Irish Law Times.


Washburn's Law of Easements. (Boston, U. S.) 1 vol. royal 8vo. £1:2s. 6d. cloth.

Curtis's Law of Patents. (Boston, U. S.) 1 vol. royal 8vo. 22s. 6d. cloth.

Cutler on the International Law of Navigable Rivers. 8vo. 1s. 6d. sewed.


Moseley's Law of Contraband of War; comprising all the American and English Authorities on the Subject. By Joseph Moseley, Esq., B.C.L., Barrister at Law. Post 8vo. 5s. cloth.

Dr. Deane's Law of Blockade, as contained in the Judgments of Dr. Lushington and the Cases on Blockade decided during 1854. By J. P. Deane, D.C.L., Advocate in Doctors' Commons. 8vo. 10s. cloth.

A Practical Treatise on Life Assurance; in which the Statutes, &c., affecting unincorporated Joint Stock Companies are briefly considered and explained. Second Edition. By Frederick Blayney, Esq., Author of "A Treatise on Life Annuities." 12mo. 7s. boards.

A Complete Collection of the Treaties and Conventions, and Reciprocal Regulations, at present subsisting between Great Britain and Foreign Powers. By Lewis Herstlet, Esq. late Librarian and Keeper of the Papers, Foreign Office. Vols. 1 to 11, 8vo. £12:15s. boards.


The Law relating to Transactions on the Stock Exchange. By Henry Keyser, Esq., Barrister at Law. 12mo., 8s. cloth.

Sewell's Municipal Corporation Acts, 5 & 6 Will. 4, c. 76, and 6 & 7 Will. 4, cc. 103, 104, 105, with Notes, and Index. By R. C. Sewell, Esq., Barrister at Law. 12mo. 9s. boards.

A Legigraphical Chart of Landed Property in England from the time of the Saxons to the present Era. By Charles Fearne, Esq., Barrister at Law. On a large sheet, 6s. coloured.

Dwyer's Compendium of the Principal Laws and Regulations relating to the Militia of Great Britain and Ireland. 12mo. 5s. 6d. cloth.


The Marriage and Registration Acts, 6 & 7 Will. 4, caps. 85, 86; with Instructions, Forms, and Practical Directions. The Acts of 1837, viz. 7 Will. 4, c. 1, and 1 Vict. c. 22, with Notes and Index. By J. S. Burn, Esq., Secretary to the Commission. 12mo. 6s. 6d. boards.


A Digest of Principles of English Law; arranged in the order of the Code Napoleon, with an Historical Introduction. By George Blaxland, Esq. Royal 8vo. £1:4s. boards.


Anstey's Pleader's Guide; a Didactic Poem, in Two Parts. The Eighth Edition. 12mo. 7s. boards.

Hardy's Catalogue of Lords Chancellors, Keepers of the Great Seal, and Principal Officers of the High Court of Chancery. By Thomas Duffus Hardy, Principal Keeper of Records. Royal 8vo. 20s. cloth. (Only 250 copies printed.)

Pothier's Treatise on the Contract of Partnership: with the Civil Code and Code of Commerce relating to this Subject, in the same Order. Translated from the French. By O. D. Tudor, Esq., Barrister. 8vo., 6s. cloth.
Browne's Practical Treatise on Actions at Law, embracing the subjects of Notice of Action; Limitation of Actions; necessary Parties to and proper Forms of Actions, the Consequence of Mistake therein; and the Law of Costs with reference to Damages. By R. J. BROWNE, Esq., of Lincoln's Inn, Special Pleader. 8vo., 16s. boards.


"This is the production of a very able man, and will be read by lawyers as well as by divines with interest and advantage."—Law Magazine.


Remarks upon the Agitation consequent on the Judgment of the Privy Council in the Case of Heebert v. Purchas. By Canon ROBERTSON, M.A. 8vo., 1s. sewed.


The Case of Long v. Bishop of Cape Town, embracing the opinions of the Judges of Colonial Court hitherto unpublished, together with the decision of the Privy Council, and Preliminary Observations by the Editor. Royal 8vo., 6s. sewed.

The Judgment of the Dean of the Arches, also the Judgment of the PRIVY COUNCIL, in Liddell (clerk), and Horne and others against Westerton, and Liddell (clerk) and Park and Evans against Beal. Edited by A. F. BAXFORD, LL.D.; and with an elaborate analytical Index to the whole of the Judgments in these Cases. Royal 8vo., 3s. 6d. sewed.


Archdeacon Hale's Inquiry into the Legal History of the Supremacy of the Crown in Matters of Religion, with especial reference to the Church in the Colonies; with an Appendix of Statutes. By W. H. HALE, M.A., Archdeacon of London. Royal 8vo. 4s. cloth.

"The archdeacon has shown that he possesses a legal mind in the good sense of the term."—Law Magazine.


Judgment delivered by the Right Hon. Lord Cairns on behalf of the Judicial Committee of the Privy Council in the case of Martin v. Mackonochie. Edited by W. ERNST BROWNING, Barrister at Law. Royal 8vo. 1s. 6d. sewed.

The Privilege of Religious Confessions in English Courts of Justice considered in a Letter to a Friend. By EDWARD BADELEY, Esq., M.A., Barrister at Law. 8vo. 2s. sewed.
New Works and New Editions in Preparation.


Tomkins' Institutes of the Roman Law.—Parts II. and III. completing the Work. In royal 8vo.

Principles and Rules of the Criminal Law, as laid down and expressed by English Judges; collected and arranged, with Introductory Abstracts and Notes. By Philip Anstie Smith, Barrister at Law. Vol. I. (Offences against Property). In royal 12mo. (To be completed in 2 vols.)


The Law Examination Journal and Law Student's Magazine. No. 9, for Michaelmas Term, 1871.

The Preliminary Examination Journal and Student's Literary Magazine. No. 4. October Examination.
On July 20th, 1871, was published, price 1s., by post 1s. 1d., to be regularly continued, and published as soon as practicable after each Preliminary Examination in February, May, July and October, No. III. of

The Preliminary Examination Journal

AND

STUDENT’S LITERARY MAGAZINE.

CONTENTS OF No. III.—July, 1871.

I. Miscellaneous Notices and Reviews.—II. Lectures on Language. Part II.—III. Synopsis of leading Authors, Statesmen Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 12th and 13th days of July, 1871, with the Answers.—V. Review of the July Examination.—VI. Correspondence.

CONTENTS OF No. II.—May, 1871.

I. Miscellaneous Notices and Reviews of Educational Works.—II. Lectures on Language.—III. Synopsis of Leading Authors, Statesmen Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 11th days of May, 1871, with the Answers.—V. Review of the May Examination and Remarks on the Study of English History.—VI. Correspondence.

CONTENTS OF No. I.—February, 1871.

I. Introductory Remarks and Review of the past Examinations.—II. Essay on the Imperfections of the Orthography of the English Language.—III. Synopsis of Leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 16th and 17th days of February, 1871, with the Answers.—V. Review of the February Examination, and names of best books to be studied.—VI. Correspondence.

Edited by JAMES ERLE BENHAM, formerly of King’s College London; Author of “The Student’s Examination Guide,” &c.;

Instructor of Candidates for the Preliminary, Intermediate and Final Examinations for Solicitors;
the Preliminary Examinations for the Bar and the Royal College of Surgeons;
the Home and Indian Civil Service, &c. &c.

The Law Magazine and Law Review.

(N E W S E R I E S.)

Published Quarterly, at 5s., in February, May, August & November.

No. 62, published in August, contains:


Imprinted at London,

number Seven in Flete strete within Temple barre,
whyloyn the signe of the Hande and starre,
and the Hovse where liued Richard Tottel,
printer by Special patents of the bokes of the Common lawe
in the seueral Reigns of
Kng Edm. VI. and of the queenes Marye and Elizabeth.
Mr. Oke's Magisterial Works.

1.


The tenth edition of this valuable compendium of magisterial law makes its appearance in two volumes, a great improvement for convenience of reference upon the single bulky volume of the former editions. The position which the work has gained and the growing demand for it are shown by the fact that a ninth edition was published so lately as 1856. In accordance with the suggestion made to Mr. Oke, the present edition has been prepared and issued immediately after the fourth edition of its equally useful companion the Magisterial Formulist. The careful and conscientious treatment which Mr. Oke always bestows upon whatever he takes in hand, entitles him to full credit when he says that 'many titles have been enlarged, much new matter inserted, and a variety of minute improvements made in the references, upon all of which I have bestowed my personal attention and utmost care'—Law Magazine.

2.


"This work is too well known to need eulogy. It is in universal use in magistrates' courts; it has been out of print for some time, and a new edition was urgently required. We believe that Mr. Oke purposely delayed it that it might be made contemporaneous, or nearly so, with the Synopsis. The contents are brought down to the end of last year, and consequently it includes all the forms required by the new statutes and decisions of the six years that have elapsed since the publication of the third edition. It is a book that has been known so long, and so extensively, that no further description of it is needed now."—Law Times.

3.


"Mr. Oke's name on a title page is a guarantee for at least a thoroughly practical work. He knows precisely what is wanted, and he supplies it. The arrangement is new and very convenient. It is what it professes to be, a handbook for the sportsman and his legal adviser."—Law Times.

4.

Oke's Law of Turnpike Roads; comprising the whole of the General Acts now in force, including those of 1861; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing contributions from Parishes, &c., practically arranged. With Cases, copies Notes, all the necessary Forms, and an elaborate Index, &c. By GEORGE C. OKE. Second Edition. 12mo. 18s. cloth.

"All Mr. Oke's works are well done, and his 'Turnpike Laws' is an admirable specimen of the class of books required for the guidance of magistrates and legal practitioners in country districts."—Solicitor's Journal.