

of the Admiralty, by command of Her Majesty, the care and charge of putting in force and giving effect to an agreement embodied in a *modus vivendi* for the lobster fishing in Newfoundland during the said season, which, as an act and matter of State and public policy, had been by Her Majesty entered into with the Government of the Republic of France ; that the said agreement provided, amongst other things, that, on the coasts of Newfoundland, where the French enjoy rights of fishing conferred by the treaties, no lobster factories which were not in operation on July 1, 1889, should be permitted, unless by the joint consent of the commanders of the British and French naval stations ; that the said lobster factory of the plaintiffs, being situate on the said part of the coasts of Newfoundland, and being one that was not in operation on the said 1st of July, 1889, and one which was without the consent aforesaid, being used and worked by the plaintiffs as a lobster factory whilst the said agreement was in force, and, such use and working thereof being prohibited by the said agreement and in contravention of its terms, the defendant in performance of his duties did for the cause assigned enter into and take possession of the messuage and premises in the statement of claim mentioned, and of certain gear and implements ; that such entry into and taking possession of the said messuage and premises, gear and implements were made and done by the defendant in his public political capacity, and in exercise of the powers and authorities, and in performance of the duties committed to him, and were acts and matters of State done and performed under the provisions of the said *modus vivendi* ; that the action taken by the defendant in putting in force the provisions of the said *modus vivendi* had, with full knowledge of all the circumstances and events, been approved and confirmed by Her Majesty as such act and matter of State and public policy, and as being in accordance with the instructions of Her Majesty's Government. The defendant submitted that the matters set forth in his answer to the statement of claim, and on which he rested his right to enter and take possession of the premises, were acts and matters of State arising out of the political relations between Her Majesty the Queen and the Government of the Republic of France ; that they involved the construction of treaties and of the said *modus vivendi* and other acts of State, and were matters which could not be enquired into by the court. The plaintiffs objected that the defence did not set forth any answer or ground of defence to the action, and it was ordered by the court that the