

Jamaica. The acts affected British subjects only. But, as between British subjects and foreigners, the orders of the Crown justify what they command so far as British Courts of justice are concerned. In regard to civil rights this, as I have shown, has been established by express and solemn decisions. Again, it is said, 'That no man's property can legally be taken from him or invaded by the direct act or command of the sovereign, without the consent of the subject, given expressly or implicitly through Parliament, is *jus indigene*, an old home-born right, declared to be law by divers statutes of the realm.'

Much other of the text-learning relating to the prerogative of the Crown has been discussed in the course of this argument, and the necessity of 'preserving the property of the subject from the inundation of the prerogative;' but, while for obvious and all-sufficient reasons of convenience and security, the personal inviolability of the sovereign is insured by the constitution, it is plain and not open to question that the prerogative itself is the creature of the constitution and is defined and limited by law, beyond the boundaries of which it cannot pass without subjecting the advisers and servants of the Crown to answer in Courts of justice to other subjects aggrieved by the unlawful exercise of the sovereign will. The point for decision here is: Was the act within the law power of the Crown? Was the authority under which the defendant justifies within the province of the prerogative? The powers of the Crown to cede British territory to a foreign state by treaty of peace, following upon the termination of war, seems to be unimpeachable, and has not been questioned at the bar; but it is said that this *modus vivendi* is not of that nature, that it does not partake of the character of a treaty, and that, if it does, no power resides in the British sovereign of entering into a compact with a foreign state in time of peace for a cession of territory, or *à fortiori* for alienating the property of a subject or of imposing upon him conditions of tenure in derogation of his ordinary rights, while he remains a subject of the Queen inhabiting British territory. Upon the question of the prerogative right of territorial cession in time of peace, it was held by the High

Court of Bombay in the year 1876, in the case of *Damodhar Gordham v. Deoram Kanji*, that it was beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in India in time of peace to a foreign Power. Lord Selborne, in delivering the judgment of the Privy Council on appeal, observed that their lordships of the Judicial Committee, 'having arrived at the conclusion that the present appeal ought to fail without reference to that question, they think it sufficient to state that they entertain such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court of Bombay, as to be unable to advise Her Majesty to rest her decision on that ground.' There are manifestly some cases, as where the grant of money is involved, in which the assent of Parliament to any treaty is practically essential. There are others involving the cession of territory in the time of peace which require the moral support of the nation as being acts of prudence and necessity, and free from the suspicion of fraud, collusion, or criminal weakness; but nevertheless, as in the acquisition of territory, so *ex converso*, in its cession the treaty-making power is in the Crown of Great Britain. Upon the argument of the case last cited, it was suggested that, if cessions in time of peace were legal, the Crown might cede any portion of territory, say Dover or the Isle of Wight, to a foreign Power; to which it was most aptly answered by Stephen, Q.C.: 'The possible extreme abuse of a power is no argument against its existence; you get beyond the tacit terms of a principle when you assume its capricious application.'

[To be continued.]

#### INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 3.

##### Judicial Abandonments.

Ovide Bouchard and Joseph Elie Breton, (Bouchard & Breton), merchants, Quebec, Sept. 23.

Benjamin Boudreaault, trader, L'Anse St. Jean Sept. 23.

Paul Nicoleau, hotel-keeper, Montreal, Sept. 16.

William E. Russell and the Hotel Chateau St. Louis Company, Quebec, Sept. 23.