

further proceeding with a cause of damage instituted by or on behalf of the owners of the steamship *Batavier* against *The Charkieh* which was alleged on affidavit to be a steamship of the Egyptian Government, and the sole ground of the application was that she was the property of a Foreign Government. Blackburn, J., in giving judgment, says : " Taking every fact brought before us, on the part of the persons applying for the prohibition, to be true, the case would be this— that the Khedive of Egypt is a Sovereign Prince—as I assume for the present purpose, although that may be disputed hereafter, and is owner of the vessel in question. She was sent to this country for repairs—a collision then takes place on the Thames. At the time the vessel was his property and his officers were on board and in possession of her. Now the question arises whether the Court of Admiralty having jurisdiction to administer maritime law, and international law against foreign vessels, could proceed with the cause for damage, because by international law such a ship is privileged and cannot be proceeded against in a foreign Court. There is authority for saying that Courts of justice cannot proceed against a Sovereign or a state, and I think there is also authority for saying that they ought not to proceed against ships of war or national vessels ; and it is obviously desirable that this rule should be established, otherwise wars might be brought on between two countries. But there is another question. What is the liability of a vessel which is the property of a foreign state when she causes damage by a collision to another vessel, she not being a ship of war, but a ship which happens to be national property and apparently employed on a mercantile adventure ?

" Does the circumstance of her being the property of a foreign state oust the jurisdiction of the Court of Admiralty ? Now," he says, " we are asked to prohibit the Court of Admiralty entertaining that which Lord Stowell, perhaps the highest authority upon those matters, declared was a difficult question of international law. It seems to me that this question can be bet-

ter decided by a Court which has almost a peculiar jurisdiction over matters relating to international law. It does seem to me that the Court of Admiralty has jurisdiction to determine the facts, and to decide whether international and maritime law do allow the circumstances stated to be a defence to a claim against the *Charkieh*, and if that Court be wrong in its judgment, the Privy Council can set it right, and their decision would be final. I do not see how it can be said that the Court of Admiralty is exceeding its jurisdiction in entertaining the suit as a question of international law, and taking that view of it, I think the Court ought not to be prohibited."

It thus appears that the Court refused to interfere by prohibition, because the sole question was one of international law, which the High Court of Admiralty and not the Court of Queen's Bench had peculiar jurisdiction to administer, subject only to an appeal to quite a different Court from the Court of Queen's Bench, the judgment of which Appeal Court was by law final and conclusive. The Court in fact *did* decide the only point presented to it, namely that the fact of the *Charkieh* being the property of a foreign Sovereign, did not oust the jurisdiction of the High Court of Admiralty as to the claim for damage to the *Batavier*. But in the present case, although it has always been the undoubted right of the Superior Courts of common law to enquire into and adjudicate upon all complaints against inferior temporal Courts, for acting without, or in excess of their jurisdiction, when duly brought before them by proceedings in prohibition, and although it is the undoubted duty of such Courts towards the litigants in such proceedings in prohibition, to decide all issues joined therein between the parties thereto, yet the Superior Court in which the proceedings in prohibition in the present case were pending, declined to exercise such right and to discharge such duty. It is obvious therefore that between the present case and that *in re the Charkieh*, there is no analogy whatever. The case must therefore now be dealt with upon its merits.

If the provisions of the Quebec License Act now under consideration are identical