

## The Legal News.

Vol. II. MARCH 8, 1879. No. 10.

### IMMUNITY OF FOREIGN MEN OF WAR.

An interesting and important question, says the *Solicitor's Journal*, was recently decided by Sir R. Phillimore, on an application for the arrest of the United States war frigate *The Constitution*, and her cargo, for a sum claimed for salvage services rendered on the occasion of her recent accident off the coast of Dorset. The general exemption of ships of war from local jurisdiction, founded not upon any absolute right of extra-territoriality, but upon principles of public comity and convenience, and arising from the presumed consent of nations, was very clearly laid down in the American case of *The Exchange* (7 Cranch, 135), where Chief Justice Marshall, in delivering the judgment of the court, said, "It is impossible to conceive, said Vattel, that a prince who sends an ambassador, or any other minister, can have any intention of subjecting him to the authority of a foreign power. Equally impossible was it to conceive that a prince who stipulates an asylum for his ship of war in distress should mean to subject his navy to the jurisdiction of a foreign sovereign. And if this could not be presumed, the sovereign of the port must be considered as having conceded the privilege to the extent in which it must have been understood to be asked." The same view was afterwards taken in the *Independencia* (7 Wheat. 283); and in the case of the *Charkueh* (21 W. R. 437, L. R. 8 Q. B. 200) Mr. Justice Blackburn remarked that "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 clearly desirable that this rule should be established, otherwise wars might be brought on between two countries." But in a case relating to the same vessel (22 W. R. 63, L. R. 4 Adm. 93) Sir R. Phillimore said that it was by no means clear that a ship of war to which salvage services have been rendered may not, *jure gentium*, be liable to be

proceeded against in a court of admiralty for the remuneration due for such services. "It is very remarkable," he added, "that Lord Stowell declined to pronounce any opinion upon this point in the case of *The Prins Frederik* (2 Dods. 451)." In the case of *The Constitution* Sir R. Phillimore seems to have discarded his former doubts, for he held that *The Constitution*, being a war frigate of the United States Navy, and having on board a cargo for national purposes, was not amenable to the civil jurisdiction of this country.—The *American Law Review* says that this decision is the first express recognition in an English court of the principles laid down by the Supreme Court of the United States in 1810, in the above-named case of *The Exchange*.

### NOTES OF CASES.

#### COURT OF QUEEN'S BENCH.

MONTREAL, February 4, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

RICHELIEU et al. (plffs. below), Appellants, and CITY OF MONTREAL (deft. below), Respondent.

*Corporation—Damages—Non-Observance of by-law.*

The appeal was from a judgment of the Superior Court (Dunkin, J.), dismissing an action of damages which appellants had brought against the Corporation of Montreal, for having issued a license to one Corbeil to keep a private butcher's stall, contrary to one of defendants' by-laws. The plaintiffs complained that they, as butchers, were injured in their trade by this contravention of the by-law.

The Court below dismissed the action on the ground that the plaintiffs had failed to prove that the Corporation had ever granted a license to Corbeil, as alleged.

RAMSAY, J. There is no contest as to the facts of this case. The appellants took a butcher's stall in the St. James Market, there being then in force a by-law which prohibits the sale of meat outside of the markets without a special license to this effect, and that no such license will be granted to keep a stall within 300 yards of any market. One Corbeil paid \$100 two years running for a license, and actually did open a stall within the limit of 300