

of the British and French naval stations.' The plea then proceeds to allege that the said lobster factory of the plaintiffs was in operation in contravention of the terms of that agreement, and that after notice to the plaintiffs, which they disregarded, he (the defendant) 'in his public political capacity, and in the exercise of the powers and authorities, and in the performance of the duties of the care and charge so as aforesaid committed to him,' entered and took possession, etc., but that the alleged trespasses 'were acts and matters of state, done and performed under the provisions of the said *modus vivendi*.' And the defendant sets out that all he had done was with a full knowledge of the circumstances, approved and confirmed by Her Majesty, and he concludes his plea in these words—'and the defendant therefore submits that the matters set forth in his answer to the said statement of claim, and on which he rests his right to enter into and take possession of the said messuage and premises, and to take possession of the said gear, materials and implements, 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 involve the construction of treaties and of the said *modus vivendi* and other acts of state, and are matters which cannot be enquired into by this honorable court.' It is admitted that if this plea can be sustained as a matter of fact, and if it be good in law, there will be an end to this action. It is assumed that the plaintiffs are British subjects, and it is hardly necessary to add that for the purposes of the present discussion the right of property in the plaintiffs in the lands and chattels, the subject of the alleged trespasses, and the acts of trespass themselves must be taken as admitted. The reply of the plaintiffs to this plea or statement of defence, besides raising issues upon questions of fact, with which we have at present no concern, avers that 'the alleged contravention of said agreement or *modus vivendi* afforded no justification in law for the action of the defendant'; 'that the said action of the defendant was not an act of state and public policy'; 'that the alleged authority from Her Majesty, and subsequent confirmation by her, afford no justification for the action of the defendant,' and do not relieve the defendant from liability for his said acts."

The judge then repeats the admission that if the plea of the defendant is sustained in fact and good in law there is an end of the case; and he then examines the authorities, comments on them, and gives this reason for holding them irrelevant, and concludes as follows:

"To sum up in short terms, for general information, our conclusion upon the issue before us, the court holds: That in an action of this description, to which the parties are British subjects, for a trespass committed within British territory in time of peace, it is no sufficient answer to say, in exclusion of the jurisdiction of the municipal courts, that the trespass was an 'act of state' committed under the authority of an agreement or *modus vivendi* with a foreign power. That in such a case, as between the Queen's subjects, the questions of the validity, interpretation and effect of all instruments and evidence of title and authority rest in the first place with the courts of competent jurisdiction within which the cause of action arises. That, therefore, the decision upon the present issue, which is confined to these points, is found in favor of the