

ment, and particularly Lord Bramwell, held that, if it were so recognized, statutes or precedents would still be required, and the case is generally taken to have decided, contrary to some earlier *dicta*, that what is called 'international law' is not, as such, part of the law of England. Here its rules, so far from being of greater authority than Acts of Parliament, are not binding on our Courts at all.

It may be urged that the Supreme Court occupies a position with regard to Congress which is different to that of our own Courts with regard to Parliament. Certainly it is accustomed to override the enactments of Congress when it finds them in conflict with the fundamental law of the constitution, and moreover, no jurists have written more strongly of the binding force of international law than American lawyers. Chancellor Kent, to cite a single instance, declared that it is, in fact, part of the common law itself. But though we do not presume to speak with any confidence on this matter, it would seem that, within the limits of the constitution, Congress is as supreme as Parliament; and it is clear that the doctrine of the freedom of the high seas, or any other rule of international law, is no part of the constitution. There are, moreover, authorities in the American reports which suggest that the assumed subordination of the Legislature, before the municipal law, to the rules generally accepted by civilized nations would at once be repudiated by the Courts, however right and proper it may be for statesmen to defer to them in practice. For example, in *The United States v. Kessler*, Bald. 34, Judge Hopkinson declared that the Court (the District Court of Pennsylvania) derived its authority from Congress, and that it made, therefore, no difference whether an alleged offence at sea was committed within the territorial waters or outside them.

We trust that the difficulty we have dwelt upon was fully considered before the application for the prohibition was launched, and it may be found that the English case has been submitted to a jurisdiction where the arguments upon which it rests, extremely strong as they are, cannot even be considered. In any event, we cannot see what end could

be served by lending to the application, which might well have been made in the name of the owner of the vessel alone, the authority of the Canadian, and possibly of the British Government.—*Law Journal* (London).

SUPERIOR COURT.

AYLMER, 3rd February, 1891.

Coram MALHIOT, J.

LEBLANC v. FORTIN.

Capias—*Secretion*—*Sufficiency of affidavit.*

HELD:—*That an affidavit which alleges that the defendant has secreted and made away with his property and effects with intent to defraud his creditors in general and the plaintiff in particular; and that without the benefit, etc., the plaintiff will be deprived of his recourse against the said defendant, is sufficient in law to establish the charge of secretion; and that the date of the secretion need not necessarily be given.*

The plaintiff caused the arrest of the defendant under a writ of *capias ad respondendum*, the affidavit to obtain the issue of which charged secretion in the following words: "That the defendant has secreted " and made away with his property and effects with intent to defraud his creditors " in general and the plaintiff in particular; " and without the benefit of a writ of attachment, *capias ad respondendum*, against the " body of the said defendant, the said plaintiff will be deprived of his recourse against " the said defendant, lose his said debt and " sustain damage." The defendant petitioned to quash on the ground that the essential allegations of the affidavit were false and insufficient for the following reasons:

1st. Because neither the deposition of the plaintiff nor the writ of *capias* issued in this cause mention the quality of the defendant.

2nd. Because the allegation of secretion is the only allegation made in said affidavit which can give rise to the issue of a *capias* in this cause; and the said allegation is insufficient and vague, inasmuch as it does not specify the reasons or facts upon which such allegation is based.