to the recovery in ejectment. It may be brought by the lessor of the plaintiff in his own name, or in the name of the nominal lessee; and in either shape, it is equally his action. The tenant **[170]** is concluded by the judgment, and cannot controvert the title. Consequently, he cannot controvert the plaintiff's possession; because his possession is part of his title." All this is applicable to all actions in ejectment in which there has been judgment. But *Aslin* v. *Parkin* (2 Burr. 665), was a case in which the judgment had been by default against the casual ejector; and Lord Mansfield adds: "As to the length of time the tenant has occupied, the judgment proves nothing." These words are, I apprehend, applicable only to a judgment by default: but at all events the altered form of the consent rule alters this if it was applicable to a judgment after the defendant appeared. The defendant now at least admits he was, by himself or his tenant, in possession at the time of the service of declaration. With respect to value, the demise and consent rule prove nothing; but in this case the value was proved by independent evidence.

Rule refused (*b*).

See stat. 15 & 16 Vict. c. 76, s. 207.

[171] IN THE MATTER OF WADSWORTH AND THE QUEEN OF SPAIN. IN THE MATTER OF DE HABER AND THE QUEEN OF PORTUGAL. 1851. Property in England, belonging to a foreign sovereign prince in his public capacity, cannot be seized under process in a suit instituted against him in this country on a cause of action arising here. And, therefore, where a suit had been brought in the lord mayor's court against the Queen of Spain upon bonds of the Spanish Government bearing interest payable in London, and moneys, belonging to her as the Sovereign of that country, had been attached in the hands of garnishees in London to compel her appearance, the Court of Queen's Bench granted a prohibition. Although the action was not, in form, brought against the Queen as Sovereign: it appearing sufficiently by the proceedings that she was charged with liability in that character. The same law prevails, a fortiori, where the action is avowedly grounded on acts done by the defendant in the character of Sovereign. The garnishee, in such a case, is a proper party to move for the prohibition. And it is no objection, that he has put in a plea (nil habet) to the attachment. Nor is the motion premature, if made after the pleading of such plea and before trial of the issue, though no other excess of jurisdiction is imputed to the lord mayor's court than its having entertained the suit. The motion may also be made by the sovereign prince who is defendant in the mayor's court, though such defendant has not appeared, and the garnishee has not pleaded. The prohibition may go at the instance of a mere stranger.

[S. C. 20 L. J. Q. B. 488; 16 Jur. 164. See *Westoby* v. *Day*, 1853, 2 El. & Bl. 620; *Frith* v. *Guppy*, 1866, L. R. 2 C. P. 36; *Mayor of London* v. *Cox*, 1867, L. R. 2 H. L. 270; *Larivière* v. *Morgan*, 1872-73, L. R. 7 Ch. 550; L. R. 7 H. L. 423; *Cooke* v. *Gill*, 1873, L. R. 8 C. P. 113; *Whinney* v. *Schmidt*, 1873, L. R. 8 C. P. 120; *Worthington* v. *Jeffries*, 1875, L. R. 10 C. P. 387; *The Parlement Belge*, 1880, 5 P. D. 210; *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 163.]

In the first of these cases, Chambers, on behalf of the after mentioned garnishees, moved, in last Easter term (April 15th), that a prohibition might issue to the lord mayor's court of London, under circumstances disclosed in an affidavit sworn by Henry Treasure, clerk to Messrs. Lawford, attorneys, and Joaquin Scheidnagel and George Stone, garnishees in the suit *Wadsworth* v. *The Queen of Spain*, depending in the said Court.

H. Treasure deposed: that he hath the conduct and management of a certain cause now pending in the court of the lord mayor of the City of London, wherein one Thomas Page Wadsworth is the plaintiff, and Her Catholic Majesty Doña Isabel Segunda, Queen of Spain **[172]** (in the said cause described as Her Most Christian Majesty Doña Isabel Segundar Queen of Spain) is defendant, and wherein the above named deponent Joaquin Scheidnagel is garnishee, and also the above named deponent

(*b*) Reported by C. Blackburn, Esq.

George Stone, together with John Martin, James Martin and Robert Martin, are garnishees, in two certain attachments issuing out of the said court. That the cause of action, as appears by an affidavit filed in the said court by T. P. Wadsworth on 30th December, 1850, is for 10,000l. sterling for interest alleged to be due to him from Her said Catholic Majesty upon certain bonds or certificates dated respectively the 10th December 1834, and stated by Wadsworth to have been duly made and entered into by or on behalf of Her Majesty the then Queen Regent of Spain, in the name of her august daughter the said Donna Isabel, &c. the defendant, by virtue of the law decreed by the Cortes and sanctioned by Her said Majesty the said Queen Regent in the name of her said daughter the Queen of Spain, on 16th November, 1834; and of the alleged treaty between the Minister, Secretary of State for the Finance Department of Spain, and Mons. Ardoin, banker, of Paris, on 6th December, 1834.

The deponent George Stone stated that, on 30th December, 1850, he and his partners, John Martin, James Martin and Robert Martin, who, with deponent, carry on business as bankers in the City of London, were served with the following document, addressed to them and dated December 30th, 1850.

"Take notice that, by virtue of an action entered in the lord mayor's court, London, against Her most Christian Majesty Doña Isabel Segundar Queen of **[173]** Spain, defendant, at the suit of Thomas Page Wadsworth, plaintiff, in a plea of debt upon demand of 20,000l., I do attach all such moneys, goods and effects as you now have, or which hereafter shall come into your hands or custody, of the said defendant, to answer the said plaintiff in the plea aforesaid: and that you are not to part with such moneys, goods or effects without license of the said court.

"CHAS. SEWELL, Serjeant at Mace.
"GEO. ASHLEY, Plaintiff's Attorney, Lord Mayor's Court Office, Old Jewry."

Scheidnagel deposed that, on the same 30th December, he was served with a document, addressed to him, but in all other respects the same as that above set forth. That he is president of a commission called the Spanish Financial Commission, which was appointed in 1834 by the Government of the kingdom of Spain for the management in England of the affairs relative to the public debt of the said kingdom, and for facilitating the payment of interest or dividends payable on account of the said kingdom to the holders in England of certain bonds or certificates, and of other public securities issued by or on behalf of the said kingdom; and that, as the president of the said commission, he hath, for the purpose of paying in England the coupons or half yearly dividends of the said bonds or certificates, from time to time received from the Director General of the said kingdom of Spain, one of the ministers of the said Queen of Spain, divers large remittances; and that the same have accordingly from time to time been applied to the purposes of such payments as and when the holders of the said bonds have presented to the said **[174]** commission the said coupons; but that the holders of a large number thereof had not, at the time of the service of the said two attachments, presented such coupons, or in any other manner applied for payment of the dividends or interest in respect thereof; and the residue of the said moneys, amounting to 7456l. 19s. 6d. or thereabouts, so remitted as aforesaid, and applicable to the payment of the same, have therefore remained under the controul of the said commission, awaiting the presentation of the said coupons, and, at the time of the service of the attachment, were in the hands of the said Jo. Martin, G. Stone, Jas. Martin and R. Martin, as the bankers of the said financial commission: and that, some time previous to the days appointed for the payment of such respective half yearly dividends or coupons, and subsequent to the receipt of the remittances for such respective payments, the said financial commission, in conformity with the directions given by the said Director General of the said kingdom of Spain, caused advertisements to be from time to time inserted in the English newspapers, naming the day on which such respective payments would be made of the interest due upon the said bonds: and that deponent had not, at the time of the service of the said attachments respectively, nor, as he verily believes, had the said Jo. Martin, G. Stone, Jas. Martin and R. Martin, or either of them, in their possession or power any moneys, goods and effects of the said Queen of Spain as her private property and unconnected with the Government of her said kingdom: and that Her said Catholic Majesty Doña Isabel

was, at the time of the commencement of the said action, and now is, the reigning Sovereign of the kingdom of Spain, [175] and as such entitled to, and then enjoyed and is now enjoying all the rights, prerogatives and privileges appertaining to such sovereignty: and that the said bonds or certificates were made by the said then Queen Regent of Spain as aforesaid in her Sovereign character only, and for and solely on account of the said kingdom of Spain, and as an act of State in the government thereof, and not for or in respect of any private or personal debt owing by the said Queen Regent, or by Her said Catholic Majesty Doña Isabel, to the said T. P. Wadsworth: and that Her said Catholic Majesty was, at the time of the commencement of the said action, and now is, resident and domiciled within the kingdom of Spain and out of the jurisdiction of this honourable Court, owing no allegiance at any time to the Sovereign Lady Queen Victoria; and that Her said Catholic Majesty Doña Isabel is recognized and acknowledged by the said Sovereign Lady Queen Victoria as the now reigning Sovereign of the kingdom of Spain; and that the said last mentioned kingdom is at amity with the Crown of Great Britain and Ireland.

The deponent H. Treasure further stated that the action in the lord mayor's court was commenced on 30th December, 1850; that Scheidnagel pleaded to the attachment nil habet, and the defendants Martins and Stone nil habent; but the issues had not yet been tried; though deponent believed that Wadsworth intended proceeding to trial of the attachments as soon as the practice of the lord mayor's court would allow, and, in the event of his obtaining a verdict, would sue out execution to recover the moneys in the hands of the garnishees Martins and Stone, unless prohibited by this [176] court. He further deposed: that he hath been advised and verily believes that, in the event of the said T. P. Wadsworth proving upon the trials of the said attachments that the said garnishees respectively have moneys in their hands as aforesaid, he will be immediately afterwards entitled to sue out process to levy and take into execution the amount so proved to be in the hands of the garnishees respectively, unless special bail be given for Her said Catholic Majesty for the amount sought to be recovered by the said T. P. W.: that, on 29th January last, application was made by counsel to the recorder of the lord mayor's court to dissolve the said attachments on common bail being filed on behalf of the Queen of Spain, on the ground that a foreign independent Sovereign could not be held to bail: but the recorder refused to dissolve the attachments; and the same now remain in full force: and deponent hath been advised, and verily believes, that, by the laws and customs of the City of London, no plea upon the trial of the said attachments can be entered on the part of Her said Catholic Majesty the Queen of Spain, or demurrer or other proceeding tendered or put in by the garnishees, whereby the question of jurisdiction of the said lord mayor's court to call upon Her said Catholic Majesty to answer the matters complained of by the said T. P. W. can be raised, or the power of the said lord mayor's court to attach the said money of Her said Catholic Majesty questioned, nor can any steps be taken in the said lord mayor's court whereby the question of Her said Catholic Majesty's liability in respect of the alleged causes of action of the said T. P. W. can be decided, unless special bail shall have been first given on behalf of Her said Catholic Majesty.

[177] The affidavit of H. Treasure verified a copy of Wadsworth's affidavit of debt in the cause, and copies of the record and proceedings in the attachments, and of one of the bonds or certificates referred to in Wadsworth's affidavit. The bond or certificate was headed (so far as the terms are material):

"Public Debt of Spain.

"Great Book of the Active Debt. Five Per Cent. Consols."

A translation of the body of the instrument was annexed to the copy, and was as follows:

"The bearer of this certificate is entitled to an annuity of ten hard dollars, equivalent to fifty-four francs or two pounds two shillings and six pence sterling, representing a capital of two hundred hard dollars, one thousand and eighty francs, or forty-two pounds ten shillings sterling, by virtue of the law decreed by the Cortes and sanctioned by Her Majesty the Queen Regent in the name of her august daughter Doña Isabel II., the 16th November 1834, and of the treaty concluded between the

Minister Secretary of State for the Finance Department, and M. Ardoin, banker, of Paris, the 6th December of the same year.

"The said annuity will be payable in Madrid, Paris or London at the option of the bearer, half yearly, on the 1st May and 1st November in each year, on presentation of the dividend warrant then due: in Paris at the rate of five francs forty centimes per hard dollar, and in London at four shillings and three pence sterling, also per hard dollar.

"The bearer has the option of causing this certificate **[178]** to be definitively converted into an extract of inscription, payable in Madrid.

"To this certificate are attached forty dividend warrants. If at the end of twenty years it should not have been withdrawn from circulation either by means of redemption or of conversion into an extract of inscription, forty new dividend warrants shall be delivered on the presentation of this certificate with the dividend warrant preceding that which latest becomes due."

The instrument was dated "Madrid, 10 December, 1834," and purported to be subscribed by the Secretary of State for Foreign Affairs, the Count Toreno, and by the Director of the Royal Sinking Fund ("El Director de la Real Caja de Amortizacion") and of the Great Book, Antº. Barata.

The affidavit of debt was as follows.

"In the Mayor's Court, London.

"Thomas Page Wadsworth, of No. 11 Down Street Piccadilly," &c., "maketh oath and saith: that Her Most Christian Majesty Doña Isabel Segundar, Queen of Spain, is justly and truly indebted unto this deponent in the sum of 10,000l. sterling and upwards for interest upon and by virtue of certain bonds or certificates, bearing date respectively the 10th day of December, 1834, and duly made," &c. (describing them as at p. 172, ante): "and which said interest was due and payable on certain days now past. "T. P. WADSWORTH.

"Sworn at the Lord Mayor's Court Office, London, this 30th day of December, 1850. Before me, G. ASHLEY."

[179] The subsequent proceedings were: The declaration in the lord mayor's court, whereby the plaintiff "demands against Her Most Christian Majesty Doña Isabel Segundar, Queen of Spain, 20,000l. of lawful money of Great Britain which she owes to and unjustly detains from the said plaintiff. For that, whereas the said defendant, on," &c., "at the parish of Saint Helen London, and within the jurisdiction of this court, for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff at the parish aforesaid and within the jurisdiction aforesaid, and then being in arrear and unpaid, granted and agreed to pay to the said plaintiff the said sum of 20,000l. above demanded where and when she the said defendant should be thereunto afterwards required: yet, notwithstanding, the said defendant, although often thereto requested, hath not yet paid to the said plaintiff the said sum of 20,000l. above demanded, or any part thereof. To the damage," &c.

Then followed prayer of process by the plaintiff; award of summons calling on defendant to appear and answer; return to the court that defendant had nothing within the city or liberties whereby she could be summoned, nor was to be found within the same; non-appearance and default by defendant on being called at the same court: allegation by plaintiff at the same court that Scheidnagel owes defendant 10,000l. in moneys numbered, "as the proper moneys of the said defendant," and now has and detains the same in his hands and custody; prayer of process by plaintiff, to attach, &c.; whereupon the serjeant at mace was commanded by the court that he, according to the custom, &c., attach the said defendant by the said 10,000l. so **[180]** being in the hands and custody of the said garnishee as aforesaid, and the same in his hands and custody defend and keep, so that the said defendant may appear in this court here to be holden, &c. to answer the said plaintiff in the plea aforesaid; and that the said serjeant at mace return, &c.: appearance by plaintiff at a court holden 13th January, 1851, and return by the serjeant that he had attached defendant by the

said 10,000l. so being in the hands and custody of the said garnishee, and the same defended, &c. according to the custom, &c., so that defendant might appear at this court to answer in the said plea: and that defendant thereupon was solemnly called at the same court and did not appear, but made a first default, which was recorded, and a further day given to defendant to appear at the next court, to be holden, &c.: similar defaults by defendant at three other courts, plaintiff appearing: prayer of process by plaintiff, at the fourth court, against the garnishee, and order by the court, thereupon, that the serjeant warn the garnishee to appear on 17th January to shew cause why plaintiff ought not to have execution of the 10,000l. attached in garnishee's hands: appearance on the day named, and imparlance, by the garnishee, who, on a subsequent day, pleaded:

That, at the time of making the said attachment, or at any time since, he had not owed to or detained from, or yet has, owes to or detains from, the said defendant named in the bill original and attachment aforesaid the said 10,000l. or any part thereof, in manner and form, &c.; concluding to the country.

Then followed a bill of proof by Thomas Paterson of Liverpool, merchant, praying to be admitted to prove that the 10,000l. is his property; and probation by the [181] same party, alleging that he claimed interest in the 10,000l. (parcel of the said 20,000l.), for that the same was received by the garnishee, and held by him, for and on account of the defendant; and that, while the same was so held by the garnishee, a negotiation was pending between the approver and defendant for the supplying to defendant by the approver of certain large quantities of corn, to wit forty ship loads: that, ultimately and before the said attachment, a contract was made and entered into by and between the approver and defendant; and, by the terms of such contract, the approver was to supply forty ship loads of corn to the defendant at the times and periods mentioned in such contract: that, on such contract being made, the approver required a sum of money from defendant on account of such shipments, to wit 10,000l.: that defendant agreed to pay the said sum of money, and arranged that the same should be paid to the approver by remitting the same to Joaquin Scheidnagel the defendant's agent in London, being the garnishee in the said attachment, and then, at the time of the making the said contract and before the making the said attachment, gave the said approver an order to receive the said 10,000l. when paid to defendant's said agent in London, so being the garnishee as aforesaid, for the specific purpose of paying the same to the approver; which order is dated long before the issuing the said attachment, to wit on 2d November, 1850: and that the said sum was so placed in the hands of the garnishee by defendant for the specific purpose of applying the same to the order above mentioned: wherefore the approver claimed the said 10,000l., and he offered to verify the premises, and that the 10,000l. was his property, in manner, &c. as he had claimed: and [182] he prayed to be admitted to prove the same, according to the custom of the city.

There were also proceedings (similar to the earlier ones in the case of Scheidnagel) resulting in the attachment of 10,000l. in the hands of Martins and Stone; warning to them to shew cause, &c.; plea by them that, at or since the time of the attachment, they had not owed to or detained from defendant the said 10,000l. or any part thereof, in manner, &c., concluding to the country: bill of proof and probation by the said Thomas Paterson, alleging facts as stated on the probation in Scheidnagel's case, as to the contract for corn, and demand by Paterson of 10,000l., on account: and that the said defendant agreed to pay the said sum of money last mentioned, and arranged that the same should be paid to the approver by remitting the said sum of 10,000l. to one Joaquin Scheidnagel, the defendant's agent in London, with directions to the said J. Scheidnagel to place the said sum in the hands of the garnishees named in the present attachment, to meet the payment of the order after mentioned, and then, at the time of making the aforesaid contract, and before the making of the said attachment, gave the said approver an order to receive the said 10,000l. when paid into the hands of the garnishees as aforesaid for the specific purpose of paying the same to the approver; which said order is dated long before the issuing of the said attachment, to wit on 2d November, 1850: that the said sum was so placed in the hands of the said garnishees by defendant through her agent for the specific purpose of applying the same to the payment of the order above mentioned: wherefore the said approver claimed, &c.; as before.

[183] Chambers, in moving, cited *The Duke of Brunswick* v. *The King of Hanover* (*a*), and contended that the sovereign prince of a foreign realm could not be sued in an action which required that she should put in special bail to answer in a Court of this country for an act of State: and, consequently, that proceedings could not go on against the garnishees. [Lord Campbell C.J. Must there be an affidavit of debt, to commence a suit in the lord mayor's court?] Randell (with Chambers). There must, by the custom.

A rule nisi was granted. In last Easter term (*b*)[1].

Hoggins, Welsby, and Locke shewed cause (*c*). The affidavits in support of the rule shew a case within the jurisdiction of the lord mayor's court. No objection can be founded on the affidavit of debt, which is unnecessary, and no part of the proceedings in the Court. (On this point *Banks* v. *Self* (5 Taunt. 234 (note)), and *Hatton* v. *Isemonger* (1 Stra. 641), were cited.) [Lord Campbell C.J. The affidavit is intended to shew the cause of action. It seems to be evidence against the plaintiff, as far as it goes (see p. 198, post).] The proceeding in question is against a garnishee according to the custom of foreign attachment. Assuming that in some stage of the case the Queen might interpose, and allege something to defeat the action, a prohibition cannot go. The lord mayor's **[184]** is the only court which has jurisdiction in this kind of proceeding; and, if a prohibition lay under the present circumstances, the party complaining would have no remedy: for which reason privilege, of attorneys or others, is not allowed to oust the court of jurisdiction in foreign attachment; *Turbill's case* (1 Wms. Saund. 67), Gilb. Com. Pleas, 209, *Ridge* v. *Hardcastle* (8 T. R. 417). The practice is fully set out in Bohun's Privilegia Londini, 253, et seq., 3d ed. It is enough, for the purpose of instituting a foreign attachment, to shew that the garnishee, being within the city, has funds of the defendant; and, if the garnishee does not come in and establish anything that may discharge him, which the defendant also is at liberty to do, then, according to the certificate of the recorder of London, cited in note (1) to *Turbill's case* (1 Wms. Saund. 67), "Judgment shall be, that the plaintiff shall have judgment against him" (the garnishee), "and that he shall be quit against the other, after execution sued out by the plaintiff." [Lord Campbell C.J. The garnishee's payment is taken to be a payment by the defendant. Patteson J. Surely the foundation of all this proceeding is a debt as to which the court has jurisdiction over the defendant. As you argue, if there were funds in the city belonging to the Queen of England, there might be an attachment against the garnishee.] In *Banks* v. *Self* (5 Taunt. 234, note), cited and acted upon in *Harington* v. *Macmorris* (5 Taunt. 228), the defendant pleaded a recovery against him as garnishee in a suit against the plaintiff, defendant being debtor to plaintiff at the time: and on demurrer it was objected that the suit against the now plaintiff in the court below was not shewn to **[185]** have been brought for a debt arising within the jurisdiction: but the Court of Common Pleas held this no valid objection, and gave judgment for the defendant. [Lord Campbell C.J. The question there was, whether it must positively appear on the pleadings that the Court had jurisdiction: it was not said that the want of jurisdiction, if averred, might not have been an answer. Erle J. The decision is only that things done before a competent tribunal are presumed to be rightly done.] In *Self* v. *Kennicot* (2 Show. 506), the defendant pleaded to debt on bond "that the plaintiff being indebted to J. S. he made an attachment of the said money in his hands;" on demurrer, one objection was, that "it does not appear that the debt arose within the jurisdiction;" and it seems that the plea was held good. [Lord Campbell C.J. The authority is a slender one for a wide proposition.]

It is a well established rule that a prohibition shall not issue to a Court of peculiar jurisdiction, upon the apprehension merely that such Court will exceed its powers; though the remedy may be grantable if it appear, in the course of the proceedings, that such an error is, or is about to be, committed. Among the cases laying down this principle, and shewing its application, are *Home* v. *Earl Camden* (*b*)[2], *Chesterton* v.

(*a*) In the Rolls Court, 6 Beav. 1. *Same* v. *Same* in Dom. Proc. (decree of Rolls Court affirmed), 2 Ho. Lords Ca. 1.

(*b*)[1] May 10th. Before Lord Campbell C.J., Patteson, Wightman, and Erle Js.

(*c*) Gurney attended on behalf of the City of London to watch the proceedings, lest the custom of foreign attachment should be infringed upon.

(*b*)[2] In Dom. Proc. 2 H. Bl. 533, affirming the judgment of K. B. in *Lord Camden*

Farlar (7 A. & E. 713), case of *The Danish Ship Noysomhed* (7 Ves. 593), *Johnson* v. *Shippen* (2 Ld. Raym. 982). The Court cannot, in the present case, see any particular in which the lord mayor's court is **[186]** exceeding its jurisdiction. Nothing has been done contrary to the due administration of justice. The bond itself is not made part of the record. It does not appear that any application has been made to the lord mayor's court to stay proceedings in the suit because the Queen cannot be sued there. The present motion is quia timet. If the objection is taken on the trial, the judge of the lord mayor's court will deal with it, and it may be brought before a Court of Error; *Horton* v. *Beckman* (6 T. R. 760), *Clark* v. *Denton* (1 B. & Ad. 92). [Lord Campbell C.J. The question as to jurisdiction may arise on facts not necessarily appearing by the record.] That might be so; as in *Day* v. *Paupierre* (13 Q. B. 802). The subject matter of this suit being within the jurisdiction of the court on a concessit solvere, the proper mode of defence on the part of the Queen would have been to appear and put in a plea. The defence, that the borrowing was an act of State, would have been fully available in that form, and would, it must be presumed, have been properly disposed of by the court. At present, this Court cannot say, on looking at the bond or certificate sued upon, that it may not be ground for an action against the Queen personally. What the law on that subject was, in the particular case, would depend on the evidence. [Erle J. The instrument itself informs the bearer that it is made by virtue of a law decreed by the Cortes and sanctioned by the Queen Regent, and of a treaty concluded by the Secretary of State. Suppose the plaintiff on his affidavit shewed expressly that he could have no right in an action against the Queen individually: would the lord mayor's court still be entitled to proceed? Suppose he made **[187]** it appear that his demand was like that made against the Queen of England in the *Baron de Bode's case* (*a*), where the grounds alleged were, to the understanding of any person acquainted with the law, a direct disaffirmance of the claim.] It would still be matter of enquiry, on the trial, what the facts were. The instrument primâ facie creates a liability in London.

But, further, the garnishees here have taken issue on a fact concerning themselves exclusively; that they have not the money in their hands. After this, they cannot set up another answer, which regards the defendant only. [Lord Campbell C.J. They have an interest in it, because, if the court has no jurisdiction, they are discharged.] The course on an attachment is thus described in Bohun's Privilegia, p. 256. "The garnishee, if he think fit, may appear in court by his attorney, and wage law, or plead, that he has no money in his hands of the defendants, or other special matter, or he may confess it." But, "if the plaintiff in the attachment shall obtain a verdict and judgment for the money or goods attached in the garnishee's hands, yet the defendant in the attachment may at any time before satisfaction acknowledged upon record, put in bail to the plaintiff's action upon which the attachment is grounded, and thereby discharge the judgment and proceedings against the garnishee; yea, though the garnishee be taken in execution, he shall be discharged if bail be put in as aforesaid." [Lord Campbell C.J. Would not it be special matter pleadable by the garnishee, that the defendant is a person over whom the court has no jurisdiction?] There is no precedent of **[188]** such a plea: and, at all events, the time for it has been let pass. [Erle J. It is not always true that a party who was entitled to object to the jurisdiction, but has allowed the cause to be tried on the other matters in dispute, cannot afterwards have a prohibition. The contrary has been held on prohibition to a County Court, where title had come in question.] In *Thompson* v. *Ingham* (14 Q. B. 710), which was such a case, the question of jurisdiction had been raised at the proper time in the County Court. [Lord Campbell C.J. Do you allow that the garnishee might move for a prohibition before plea pleaded?] He might; but not after he has put in a plea which admits the jurisdiction. An *Anonymous case* in Ventris (236) agrees with this view; and *In re Jones and James* (1 Lowndes, M. & P. 65), is a direct authority on the point. [Erle J. My opinion in that case must be taken to have been reviewed and found wrong.]

As to the principal question: the case is, that the defendant has raised money within the jurisdiction of the lord mayor's court by bonds bearing an interest payable

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v. *Home*, 4 T. R. 382, which reversed the judgment of Com. Pl. in *Home* v. *Earl Camden*, 1 H. Bl. 476.

(*a*) 8 Q. B. 208. *Baron de Bode* v. *The Queen*, 13 Q. B. 380.

in London. Nothing appears that can legally distinguish the funds attached from the Queen's own funds. She appears to have the controul of them all. In *The Duke of Brunswick* v. *The King of Hanover* (*d*), cited in moving for this rule, it was held that a foreign prince, being in this country, could not be made amenable to the Court of Chancery for acts done in exercise of his Sovereign authority: but those acts were done in his own dominions; a circumstance particularly noticed by Lord Cottenham in his address to the House **[189]** of Lords. In the same case, at the Rolls, Lord Langdale, after observing that "the law of England affords no authority for the proposition, that sovereign princes resident here may not be sued in the Courts here," cites *De la Torre* v. *Bernales* (1 Hov. Supp. to Vesey, 149), where Vice Chancellor Sir J. Leach ordered the King of Spain to be named as party to a suit, the object of which was to charge Bernales in respect of acts done by him as the King's agent, and "laid it down, that a foreign Government, or Sovereign, could both sue and be sued in the Courts of this country." [Lord Campbell C.J. The *act in question* here was not done by the Queen personally, but by her mother, while regent.] A person raises money in London for the Queen of Spain. [Lord Campbell C.J. The instrument is not signed by her, but by a public officer; like our Exchequer bills.] It is not necessary that the Queen should have actually put her own seal to the bond, to render her liable. Affidavit is made in the cause that she is the party indebted. It appears that the Cortes have authorized her to borrow money; but this Court cannot judge of the nature and effect of that authority. Before the reign of Edward I., the King, even of this country, might have been sued in the Courts (*b*). Since the proceeding by Petition of Right was instituted, that is no longer so; but a foreign prince may still be sued, at least upon engagements entered into here. [Patteson J. The liability of a foreign prince upon acts done in his own dominions came into question in *Munden* v. *Duke of Brunswick* (10 Q. B. 656); but there was no decision on the point.]

[190] Chambers, Peacock and Randell, contrà. The suit has arrived at this point: the garnishees having pleaded, issues have been joined upon the pleas, and now stand for trial, the result of which, if the pleas be not proved, will be that execution will go against the moneys of the defendant, unless she put in bail within a year and a day to appear and try in the lord mayor's court. The questions are, whether prohibition lies, and whether it is now properly applied for. Now the rule is, that a prohibition will be granted whenever the Superior Court can see that the court below has exceeded its jurisdiction. And (assuming that the garnishees here are not entitled as parties to demand it) the prohibition may issue even at the *instance of a stranger*; a rule founded not only in justice to the subject but in a jealous regard to the prerogative of the Crown: for "there are two things in prohibition, 1st contempt of the Crown, and disherison of it in taking on them judicial power where they have no right; 2d is a damage to the party;" *Ede* v. *Jackson* (Fortesc. 345). "And the King's Courts that may award prohibitions, being informed either by the parties themselves, or by any stranger, that any Court Temporal or Ecclesiastical doth hold plea of that whereof they have not jurisdiction, *may lawfully prohibit the same*, as well after judgment and execution, as before;" 2 Inst. 602. The rule on this subject has been exemplified in the late decisions as to the County Counts. [Lord Campbell C.J. Those cases, as well as *Home* v. *Earl Camden* (2 H. Bl. 533; 4 T. R. 382; 1 H. Bl. 476), the Court of Appeals in cases of prize, to which the prohi-**[191]**-bition went, had exclusive jurisdiction over the matter which they had decided, namely, whether a certain capture was prize or not within the Prize Acts then in force: and therefore prohibition was held not to lie. But, if they had been exceeding the bounds of the common law in construing the Acts, they might have been prohibited, even after sentence, according to *Gare* v. *Gapper* (3 East, 472), and *Gould* v. *Gapper* (5 East, 345), and other authorities. Therefore the garnishees here are not barred by having pleaded. The principle (acted upon in *Hall* v. *Maule* (7 A. & E. 721)), that a Court should not be presumed likely to exceed its jurisdiction, does not apply when the Court has entertained a suit of which, originally, it ought not to have taken cognizance. Now, in the present case, the Queen, the defendant in the suit, has never been summoned. It is not pretended that she has: but it is assumed that, because the debt arose, as it is said, within the jurisdiction, and nothing is found therein by which the defendant can be summoned,

(*d*) 2 H. Lords Ca. 1. S. C. in the Rolls Court, 6 Beav. 1.
(*b*) See 16 Vin. Abr. 536, tit. Prerogative of the King (Q. 4).

and the defendant herself is not to be found there, a summons may, by custom, be supposed. But, if it was impossible, legally, that the Queen could be summoned, a summons cannot be supposed; and it was held in a case from the Tolzey Court of Bristol, *Bruce* v. *Wait* (1 Man. & G. 1), that, on general principles, a custom to issue foreign attachment without summons would be bad. [Lord Campbell C.J. The principle relied upon is, that a debt within the jurisdiction gives authority to the Court, though the debtor lives out of the jurisdiction. The law is so in Scotland.] It ought at least to be possible that the debtor should have the opportunity of appearing. **[192]** *Buchanan* v. *Rucker* (1 Camp. 63; 9 East, 192), is another authority against the suggested custom. Lord Campbell C.J. What is there to shew that a personal service ought to be practicable?] It is at least requisite that, if a summons were served, the summons should have force to compel the party to come in. The present case differs from others inasmuch as the defendant always was, and must be, out of the jurisdiction. This is not an objection which can be waived by pleading, in the case of a garnishee, more than if it were that of an ambassador. [Lord Campbell C.J. One difficulty you have is, that there are, as it seems, cases in which a foreign prince may be sued, and the court below may be proceeding to decide, but not wrongly, as to this being one of them.] The assumption, that this is such a case, should be sustained by those who allege the jurisdiction: but the contrary appears from the affidavits, the bonds, and the proceedings in the suit.

Then, has the lord mayor's court any jurisdiction, for the purpose of a suit, over a Queen of Spain resident in her own dominions? In *Douglas* v. *Forrest* (4 Bing. 686, 702, 3), Best C.J. said that "a natural born subject of any country, quitting that country, but leaving property under the protection of its law, even during his absence, owes obedience to those laws, particularly when those laws enforce a moral obligation:" but he distinguished such a case from *Buchanan* v. *Rucker* (1 Camp. 63: 9 East, 192); and he added: "To be sure if attachments issued against persons who never were within the jurisdiction of the Court issuing them, could be supported and enforced in the country in which the person attached resided, the Legislature of **[193]** any country might authorize their Courts to decide on the rights of parties who owed no allegiance to the Government of such country, and were under no obligation to attend to its Courts, or obey its laws. We confine our judgment to a case where the party owed allegiance to the country in which the judgment was so given against him." In the present case, the consequence of a finding against the garnishees will be, that the party holding 10,000l. which is the money of the Spanish Government will be unable to say that it is so till the Queen puts in bail; a step by which she would acknowledge the jurisdiction of the Court. If the proceedings in this case are valid, a ship of war belonging to the Queen of Spain might be attached; an act which might lead to disastrous public consequences. This evil was pointed out by Lord Langdale in *The Duke of Brunswick* v. *The King of Hanover* (6 Beav. 1), where his Lordship observed: "The cases which we have upon this point go no further than this; that where a foreign Sovereign files a bill, or prosecutes an action in this country, he may be made a defendant to a cross bill or bill of discovery in the nature of a defence to the proceeding, which the foreign Sovereign has himself adopted. There is no case to shew that, because he may be plaintiff in the Courts of this country for one matter, he may therefore be made a defendant in the Courts of this country for another and quite a distinct matter:" and he added (6 Beav. 40): "The defendant insists upon it as a general rule, that in times of peace at least, a sovereign prince is, by the law of nations, inviolable; that obvious inconveniences and the greatest danger of war would **[194]** arise, from any attempt to compel obedience to any process or order of any Court, by any proceeding against either the person or the property of a sovereign prince; and indeed that any such attempt would be deemed a hostile aggression, not only against the sovereign prince himself, but also against the State and people of which he is the Sovereign: that it is the policy of the law (to be everywhere taken notice of), that such risks ought to be avoided:" to which propositions his Lordship's judgment conformed. [Lord Campbell C.J. There may in any country be private property of a foreign prince, to which these remarks would not apply.] Lord Lyndhurst said, in *The Duke of Brunswick* v. *The King of Hanover* (2 Ho. Lords Ca. 23), in the House of Lords, that it was unnecessary there to define the circumstances (admitting that such might exist) under which a foreign Sovereign might be sued here for acts done abroad: but he said: "It must be a very particular case indeed, even if any such case could

exist, that would justify us in interfering with a foreign Sovereign in our Courts." And Lord Brougham said: "It would have been necessary where two foreign princes came to the Courts of this country respecting a matter transacted abroad, to have disclosed such a case as would have shewn clearly that it was upon a private matter, and that they were acting as private individuals, so as to give the Courts in this country jurisdiction." The process (ante, pp. 172, 3), here is to attach "all" "moneys, goods and effects" of the defendant without reference to their being public or private. If the property to be taken was private, that distinction should have been pointed at in **[195]** all the proceedings. [Lord Campbell C.J. You say, assuming this to be a private debt, the attachment is such that public property may be taken for that private debt.] That is so; and the proceeding, if upheld, violates the law of nations. To that law Lord Mansfield, in *Triquet* v. *Bath* (3 Burr. 1478, 1480), refers the privilege of foreign ambassadors and their servants against arrest; and he notices the incident of a statute, 7 Ann. c. 12, having been passed, in consequence of the Czar's ambassador being arrested. But in that case, he adds, "If proper application had been immediately made for his discharge from the arrest, the matter might and doubtless would have been set right. Instead of that, bail was put in, before any complaint was made." Here, the erroneous course of putting in bail is declined, and application is made directly to the Court.

The power of Courts of Justice to enforce process against a foreign State or its debtor has been lately discussed in France. (Chambers cited a printed memorial addressed to the Court of Cassation, entitled "Mémoire pur M. le Ministre des Finances d'Espagne, représentant l'état Espagnol, contre Le Sieur Casaux, liquidateur de la maison Lambège et Pujol, de Bayonne:" Paris, 1846; in which some decisions, stated to have taken place in French Courts, are relied upon: and he read extracts from Vatel's Law of Nations, b. 2, c. 3, sects. 35, 39, and same work, Preliminaries, sects. 15, 16. [Lord Campbell C.J. These are general dicta, which cannot much affect the argument.])

Cur. adv. vult.

[196] In *De Haber* v. *The Queen of Portugal* Sir F. Thesiger, in last term (April 16th), obtained a rule calling on the Mayor and Aldermen of the City of London, upon notice of the rule, to be given to the registrar, or his deputy, of the Court after mentioned, and on Maurice de Haber, upon notice, &c., to shew cause why a writ of prohibition should not issue to the court, &c. called the lord mayor's court of London, to prohibit the said court, and also the said mayor and aldermen, from holding plea or further proceeding in the action entered in the said lord mayor's court by the said M. de Haber against Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, therein described as "Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, as reigning Sovereign and supreme head of the nation of Portugal;" and from further proceeding with two foreign attachments issued out of the said court in the said action, and made in the hands of Senhor Guilherne Candida Xavier de Brito and Messrs. William Miller Christy, George Holgate Forster, George Scholefield, William Shadbolt, John Timothy Oxley and George Tayler, respectively; and to restrain M. de Haber from further proceeding with the same or either of them.

The rule was obtained upon an affidavit, in which it was deposed that, on 5th of July 1850, Maurice de Haber entered an action in the mayor's court of London against Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, and issued an attachment in the same court against the moneys, &c. which were or should come into the hands of Senhor Guilherne Candida Xavier de Brito. The deponent stated that he had been **[197]** informed and believed "that the claim of the said Maurice de Haber against Her said Most Faithful Majesty (if any such he has) arises for money equivalent in sterling money to the sum of 12,136l., or thereabouts, which the said Maurice de Haber alleged that he had in the hands of one Francisco Ferreiri of Lisbon in the kingdom of Portugal, banker, at the period when Don Miguel was driven out of Portugal; and which was, by the said Francisco Ferreiri, paid over to the Government of Portugal under the decree of some Court in Portugal;" and "that the cause of action (if any there be) arose in the kingdom of Portugal, and not within the City of London." On this attachment the garnishee obtained a verdict and judgment in the mayor's court (see pp. 208, 9, post). On 28th March, 1851, De Haber entered another action in the same court against "Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, as reigning Sovereign, and as supreme head of the