REPORTS OF CASES heard in the House of Lords, and decided during the Sessions 1848-50. By C. CLARK and W. FINNELLY, Barristers-at-Law. Vol. II.

CHARLES FREDERICK AUGUSTUS WILLIAM, Duke of BRUNSWICK,—*Appellant;* ERNEST AUGUSTUS, King of HANOVER, Duke of CUMBERLAND and TEVIOTDALE, in GREAT BRITAIN, and Earl of ARMAGH, in IRELAND,—*Respondent* [July 25, 27, 31, 1848].

[Mews' Dig. viii. 179, 180, 181, 182, 186, 294. S.C., below, 6 Beav. 1; 13 L.J. Ch. 107; 8 Jur. 253. Discussed in the *Parliament Belge*, 1880, 5 P.D. 207, and *Mighell* v. *Sultan of Johore* (1894), 1 Q.B. 149; and see *London (Mayor of)* v. *Cox*, 1867, L.R. 2 H.L. 262; *Smith* v. *Weguelin*, 1869, L.R. 8 Eq. 214; *Hettihewage Siman Appu* v. *Queen's Advocate*, 1884, 9 A.C. 588.]

Foreign Sovereigns—Affairs of State—Jurisdiction.

A foreign sovereign, coming to England, cannot be made responsible in the courts there for acts done by him, in his sovereign character, in his own country:

HELD, therefore, that the King of Hanover, who was also a British subject, and was in England exercising his rights as such subject, could not be made to account in the Court of Chancery for acts of state done by him in Hanover and elsewhere abroad, in virtue of his authority as a sovereign, and not as a British subject.

This was an appeal against an order of the Master of the Rolls, allowing a demurrer to the appellant's bill for want of equity, and also for want of jurisdiction (6 Beavan, 1; 13 Law J., N.S. 107).

[2] The bill, filed in August 1843, stated that in 1830 the appellant was the reigning duke of Brunswick, and was, in his private capacity, seised and possessed of real and personal estates of considerable value in Brunswick, England, Hanover, France, and elsewhere; but that on the 6th of September, 1830, during his absence from Brunswick, a revolutionary movement took place there, in the course of which the government was overthrown, and he was prevented from returning to resume his authority as reigning Duke; that pending the said movement, a decree of the Germanic Diet of Confederation was passed, dated the 2nd of December, 1830, whereby the appellant's brother, William, Duke of Brunswick, was invited to take upon himself, provisionally, the government of the Duchy, and the Diet left it to the legitimate *agnati* of the appellant to provide for the future government thereof: that his late Majesty William the Fourth, as King of Hanover, was a member of the said Diet, and as such King, he or his Viceroy, the Duke of Cambridge, voted in support of the said decree: that in February 1831, his said late Majesty, and the said William, Duke of Brunswick, claiming to be the legitimate *agnati* of the appellant, caused to be published a declaration, purporting to depose him from the throne of the said Duchy, and declaring that the same had passed to William, Duke of Brunswick, who, in pursuance of such declaration, had ever since exercised the rights and authorities of Sovereign Duke of Brunswick.

The bill further stated that in 1833 an instrument in writing, signed by his Majesty William **[3]** the Fourth, and William, Duke of Brunswick, and dated at St. James's the 6th of February, and at Brunswick the 14th of March, 1833, was promul-

gated by them in the German language, which, being translated, was as follows:—"We, William the Fourth, King of, etc., and of Hanover, Duke of Brunswick and of Lunebourg, and we, William, Duke of Brunswick and of Lunebourg, moved by the interests of our house, whose well-being is confided to us, and yielding to a painful but inevitable necessity, have thought it necessary to consider what measures the interests of his Highness Charles, Duke of Brunswick, the preservation of the fortune now in his hands, the dangers and illegality of the enterprizes pursued by him, and lastly, the honour and dignity of our house, may require; and after having heard the advice of a commission charged by us with the examination into this affair, and after having weighed and exactly balanced all points of fact and law; and whereas, after the dissolution of the German empire, the powers of supreme guardianship over the Princes of the empire, which up to that period had appertained to the Emperor, devolved to the heads of sovereign states; we, taking into consideration the laws and customs, and by virtue of the rights unto us belonging, in quality of heads of the two branches of our House, have decreed as follows:

"Article the first.—Certain facts, either notorious or sufficiently proved, have caused us to arrive at the conviction that his Highness Duke Charles is at this time wasting the fortune which he possesses in enterprizes alike impossible and dangerous to [4] himself and other persons, and is seeking to damage the just claims which certain persons interested now or hereafter may legally have in his property, we have consequently considered that the only method of preserving the fortune of his Highness Duke Charles from total ruin, is to appoint a guardian over him.

"Article the second.—In consequence of this conviction, we decree that Charles, Duke of Brunswick, shall be deprived of the management and administration of his fortune; a guardian shall be appointed whom we shall choose by mutual consent from amongst the noble scions of our house, although the right of choice belongs to the legitimate sovereign of the Duchy of Brunswick in virtue of his title alone."

By the third, fourth, and fifth articles, the guardianship was confided to the Duke of Cambridge, then Viceroy of Hanover, and he was authorized to appoint sub-guardians for the management of the property, who should make an inventory thereof, and take measures for the preservation and administration of the fortune placed under the guardianship of his Royal Highness, to whom they should render an annual account of their management, to be by him transmitted to William the Fourth and the Duke of Brunswick for settlement and approval.

By article the sixth the guardianship was to be "considered as legally established at Brunswick, where it was to have its locality." And by article the seventh the decree was to be published in the bulletins of the laws of the kingdom in the usual form, etc.

At the foot of this instrument was added a note, signed by the respondent, then Duke of Cumberland, [5] and by the Dukes of Sussex and Cambridge, approving of the arrangement.

The bill then stated that the said instrument was void, but nevertheless the Duke of Cambridge accepted the appointment of supreme guardian of the appellant's property, and entered into possession thereof to a very considerable amount; and after several payments, properly made, there remained in his hands a large surplus for which he never accounted to the appellant: that on the death of William the Fourth, in June 1837, the respondent became King of Hanover, and thereupon by some instrument in writing, the particulars of which he refused to disclose, but which was signed by him and William, Duke of Brunswick, the respondent was purported to be appointed guardian of the appellant in place of the Duke of Cambridge, under the instrument of the 6th of February and 14th of March, 1833, and with all the powers and authorities thereby purported to be conferred on the Duke of Cambridge: that shortly after such appointment, the Duke of Cambridge accounted to the respondent for all the real and personal estates of the appellant, possessed by him or his agents, and paid the balance due from him in respect thereof to the officers of the treasury of Hanover, whereby the same came to the hands of the respondent, and he, upon his appointment as guardian, entered into, and ever since continued, by himself or his agents, in the possession or receipt of the rents and profits of the real estates belonging to the appellant in his private capacity at Brunswick, and also from time to time took possession of further parts of the appellant's personal property in Brunswick and elsewhere, and sold and con-[6]-verted into money parts

thereof, which did not consist of money, and possessed himself of the produce of such sale, and from time to time made divers payments on account of the appellant and of the expenses incurred in the management of his property; but after allowing for such payments, there remained a large balance, to the amount of several hundred thousand pounds, due from the respondent, and he never rendered to the appellant any account of the property so possessed by him.

The bill further stated that the respondent, until within a few weeks, had been residing in Hanover, out of the jurisdiction; that the appellant had by himself and agents applied to him to account for the rents and profits of the real estates, and for the personal estate and effects, and produce of the sale thereof, etc., with which applications the respondent refused to comply on various pretences suggested in the bill,—as that the said instrument of 1833, and the subsequent instrument, under which the respondent was appointed guardian, were valid and legal, and that he was not liable to account for the acts and receipts of himself and his agents, or of the Duke of Cambridge and his agents, otherwise than to William, Duke of Brunswick; but the bill charged the said instruments to be invalid according to the laws as well of Brunswick and Hanover as of Great Britain, however that the Duke of Cambridge and the respondent respectively took possession of the appellant's real and personal estates, as aforesaid, under colour of the said appointments as guardians and trustees for the appellant, and not adversely; and that the appellant and the respondent, both then residing in [7] England, were subjects of the Crown of Great Britain and Ireland, and that by the law of England such appointments of the Duke of Cambridge and of the respondent to be guardians of the appellant, and all the rights purported to be given to them respectively, were void, even if the same were valid by the law of Brunswick, and that if the said appointments were valid at the time they were made—which the appellant denied—there was then nothing in the circumstances, or conduct, or state of mind of the appellant to debar him from the full enjoyment of his property; and he charged, that in the circumstances aforesaid, the respondent was liable to account to him for the receipts and payments, acts, neglects, and defaults of himself and his agents, under his alleged appointment of guardian as aforesaid.

The bill, after charging in detail divers acts and dealings by the Duke of Cambridge and the respondent, and their respective agents, with the appellant's private property of various kinds, also charged, that in 1833-4, the appellant, then residing in Paris, and possessed of other property of large amount, the Duke of Cambridge, as guardian, acting by himself and agents, under colour of said appointment caused proceedings to be taken and attachments to be issued against the appellant and several persons in France, who had in their possession money, goods, and other effects of the appellant. The bill stated a long course of litigation arising out of those proceedings in France, resulting, in 1837, in a final decree awarding damages and costs to a large amount against the Duke of Cambridge, in respect of which the appellant received 100,000 francs in Paris, and for the unsatisfied ba-[8]-lance, amounting to £1775, he, in 1838, brought an action against the Duke in Her Majesty's Court of Common Pleas, to which the Duke of Cambridge, after putting in several dilatory pleas, at last submitted in 1840, and paid £2000 in satisfaction of the debt and costs. And the bill charged that the said £2000 and 100,000 francs were paid out of the personal estate, or the rents of the real estates, of the appellant, possessed and received by the Duke of Cambridge or his agents, or by the respondent or his agents, under the said instrument of 1833.

The bill also charged that the appellant proceeded to the town of Osterode, in the kingdom of Hanover, in 1830, accompanied by a small retinue, with the intention of making a peaceable entry into his own dominions, and that while staying at the hotel there, he was attacked by a party of armed men, and compelled to escape into Prussia, leaving behind him cash and notes to the amount of 24,000 crowns, or £4500 sterling, all which came to the hands of the Duke of Cambridge; in evidence of which the bill set forth a letter from the Duke to the appellant, stating, "With respect to the property taken from you at Osterode, I have the satisfaction of being able to inform you that there is every reason to believe it is in perfect safety. I think, however, under actual circumstances, it would not be consistent with my duty to deliver the property into your hands, but I propose to place it at the disposal of the existing government of Brunswick, to whom you can make application, etc." And the bill

charged, that the Duke of Cambridge in resigning the office of guardian, accounted for the said cash and notes to the respondent, as the [9] new guardian, and that the latter was liable to account for the same to the appellant. The bill also charged, that the respondent was a peer of the realm, and his title as such, was "Ernest Augustus Duke of Cumberland and Teviotdale, in Great Britain, and Earl of Armagh, in Ireland," and that since his arrival, and during his then residence in London, he exercised his rights and privileges as such Peer.

The bill prayed that it might be declared that the said instrument of the 6th of February and 14th of March 1833, and the appointment of the Duke of Cambridge as guardian of the fortune and property of the appellant, thereby purported to be made, and the subsequent appointment of the respondent as such guardian, were absolutely void and of no effect; and that it might be declared that the respondent was liable and ought to account to the appellant for the personal estate, property, and effects, and the rents and profits and produce of the sale of the real estates of the appellant, possessed or received by the respondent, or any person or persons by his order or for his use, etc., since his appointment as guardian, by virtue of the said instrument, including therein the personal estate and effects, rents, profits, and produce paid or accounted for to the respondent by the Duke of Cambridge as aforesaid, etc.

The respondent appeared (see 6 Beavan, p. 9, (note) and p. 33), and demurred to the bill for want of equity and for want of jurisdiction. The Master of the Rolls allowed the demurrer. The appeal was brought against that decision.

[10] Mr. Rolt and Mr. Heathfield for the appellant:—The respondent's defence to this suit is put on two grounds; first, that, as an independent sovereign, he is not liable to be sued in the courts of this country, and his right of exemption is not affected by the circumstance of his being also a subject of her Majesty; secondly, that the matters complained of in the bill are not the subject of municipal jurisdiction, being either matters of state or political transactions, which cannot be dealt with in our courts, consistently with principles of public policy; so that the whole of the respondent's case is made to rest upon the political character of himself and of the transactions in question.

The matters stated in the bill, and which are, or at least must be taken upon the demurrers to be, admitted by the respondent, are transactions of a private nature as between one subject of her Majesty and another, for the bill does not complain of any act done in respect of the appellant's sovereignty or Dukedom. The instrument, under colour of which he was deprived of the management of his private property, purported to have for its object to preserve the property, and not to deprive him absolutely of it. The bill alleges that that instrument is invalid according to the law as well of Brunswick and Hanover as of England. That allegation also must be taken to be admitted, but it is capable of proof in due form if necessary. The bill further alleges that the Duke of Cambridge, the first guardian under that instrument, seized and possessed himself of the appellant's property, not adversely, but as guardian—

[11] [Lord Lyndhurst.—Is the Duke of Cambridge a defendant?]

He was not made a party, as the bill stated that he accounted for his management to the respondent, his successor in the guardianship. It is not, however, necessary to discuss that point, as there was no demurrer to the bill for want of parties, nor was any question of that kind raised in the Court below.

The bill further alleges, that the appellant and respondent are both subjects of the Crown of England; that the said instrument, even if valid according to the laws of Brunswick, is invalid according to the law of England, and that there is nothing now in the mind or character of the appellant to shew that he is not perfectly competent to manage his property. The demurrer admits all these allegations.

Besides the seizure by the guardians of the appellant's private property within the territory of the duchy, the bill states that proceedings were taken in 1834 by the Duke of Cambridge, as such guardian, against the appellant, then residing in France, and against various persons there who held money or effects belonging to him. The result of that long and expensive litigation was a decree for the appellant, with costs, against the Duke. The bill states, and the statement cannot be denied, that these costs, as well as another sum of £2000, for which a suit brought in the English Court

of Common Pleas was compromised, were paid out of the appellant's own property in the hands of the respondent. The bill also states, that in a criminal attack, made by an armed party on the appellant in the Hanoverian town of Osterode, in 1830, he was deprived of 24,000 crowns, **[12]** equal to £4500 sterling, besides his carriage and some jewels; and there is set forth as evidence of that statement, a letter from the Duke of Cambridge, in effect admitting that the money and other property came to his hands, and that he thought it his duty to place them at the disposal of the then existing government of Brunswick. All these statements amount to this clear and admitted fact, that the Duke of Cambridge first, and the respondent afterwards, took possession of the appellant's property of various kinds at divers times and places—acting as guardians throughout, although under an invalid instrument,—and he, according to the course of the Court of Chancery, asks for an account. If these transactions had taken place between private individuals, there could be no doubt whatsoever of the appellant's right to such account. But it is objected that the matters complained of, being matters of state transacted abroad, cannot be the subject of municipal jurisdiction here. That defence has been long exploded; it was the same that was set up against inquiry into the levying of ship money and the issuing of general warrants, and, if it were to prevail, would lead to an intolerable state of tyranny. The principle of our Courts is, that whenever any person, subject to their jurisdiction, whether sovereign or not, acts without authority or exceeds it, he is liable to account; *Nabob of the Carnatic* v. *East India Company* (1 Ves. Jun. 371), *Mostyn* v. *Fabrigas* (Cowp. 161), *Frewen* v. *Lewis* (4 Myl. and Cr. 254-5), *Attorney General* v. *Forbes* (2 Myl. and Cr. 123), *Ellis* v. *Lord Grey* (6 Sim. 214).

[13] The second defence to the bill is, that the respondent is, by his character of foreign independent sovereign, placed above the jurisdiction of the Court. The appellant, though also a foreign Prince, is by the act of 4 Anne, c. 4, to be taken to be a natural-born subject of this realm, as a descendant of the Princess Sophia of Hanover. The respondent also, though an independent sovereign, is a subject of her Majesty, being a Peer of the realm, and was actually exercising his privileges as such at the time the bill was filed, so that both parties maintain the character of subjects of the realm as much as any other suitors of the Court. The question then is, whether there is anything in the character of the instrument by which the King of these realms and a foreign sovereign Prince could authorise a third person, a subject of this realm, to take possession of the property of the appellant, and retain it without accounting? It is quite clear that the sovereign of this country has no power by law to authorise any person in this country to seize and retain, without account, the property of another. Do the laws of Brunswick or Hanover confer such authority? The bill charges in effect, that they do not, but the demurrer implies that they do, for after stating in the usual way that there is no equity in the case made by the appellant, it adds, in a very unusual form, that the Court has no jurisdiction as to any of the matters stated in the bill.

The respondent, before putting in the demurrer, adopted the ordinary course of moving the Court to discharge the process, as in *Viveash* v. *Becker* (3 Maule and Sel. 284), **[14]** *Davidson* v. *The Marchioness of Hastings* (2 Keen, 509), and *Kinder* v. *Forbes* (2 Beav. 503); but Lord Lyndhurst refused the application, observing that "the defendant is a Peer of the realm, has taken the oath of allegiance to the Sovereign, and has a seat in the House of Peers, and at present is resident here" (6 Beav. 9 (note)). That was an adjudication of the entire question of jurisdiction which was actually exercised in that order; it is, literally, *res judicata*.

But if the question was not then determined and disposed of, the *onus* lies on the respondent to establish his immunity. There is no case or authority shewing that a foreign sovereign residing within the realm, is not subject to the jurisdiction of our Courts. The Master of the Rolls, in his judgment, referred to a passage in Bynkershoek, Tom. 2, "*De foro legatorum*," cap. 3, but not to cap. 4, "*Principis bona in alterius imperio, etc.*," in which is given a clear opinion, applicable to the present question. Any person who claims exemption from the jurisdiction must shew the grounds of exemption. Ambassadors are declared exempt (7 Anne, c. 12), because perfect freedom is necessary to the exercise of their vocation. But an ambassador may, by other means, be brought to account and to render justice to a party complaining, as by an application to his own sovereign and government. That mode of re-

dress is here impossible, because the party is himself the Sovereign, and will not, of course, at home grant the redress which he refuses here, so that there is here, if the defence be upheld, a complete failure of justice. There is no necessity to contend that the respondent is liable to **[15]** arrest, but no reason can be assigned against permitting process against him up to sequestration. All that is required in this case is that, it being shewn that wrong has been done, the respondent should be called on to make reparation. The defence set up in this case would, if allowed, give the respondent an immunity which is not claimed by the Sovereign of these realms, who, in answer to the subject's complaint, directs right to be done, whereupon the courts take jurisdiction between the subject and Sovereign, as in the case of *Viscount Canterbury* v. *The Attorney General* (1 Phillips, 306).

But though it may be held that an independent foreign sovereign is exempt from the jurisdiction—how to serve him with process would be the difficulty—there is in this case the additional ingredient, that the respondent is also a subject, and was not only in this country, but in the exercise of his privileges as a Peer when the bill was filed and he was served with process. He might, as a foreign sovereign, sue at law or in equity any subject of the realm. There is no principle of law or reason on which he may not be sued; *Calvin's Case* (7 Co. Rep. 15), *Hullett* v. *The King of Spain* (1 Dow and C. 169), *King of Spain* v. *Hullett* (1 Clark and F. 333), *Glyn* v. *Soares and the Queen of Portugal* (1 You. and Col., p. 688), *Queen of Portugal* v. *Glyn* (7 Clark and F. 466), *Melan* v. *Duke de Fitzjames* (1 Bos. and Pul. 138), *Barclay* v. *Russell* (3 Ves. 424; see p. 431), *De la Torre* v. *Bernales* (1 Hov. Sup. to Ves. 149), *Moodalay* v. *The* **[16]** *East India Company* (1 Bro. C. C. 469; 2 Dick. 652), *Munden* v. *The Duke of Brunswick* (16 Law J. 300), Vattel, B. iv., ch. vii., sec. 108, Bynkershoek, Tom. 2, cap. 4. From these cases and authorities is to be clearly inferred this principle, that if process from our Courts can be enforced against a foreign sovereign, he is liable to the jurisdiction;—so that the authorities, as well as principle, are in favour of the jurisdiction.

Mr. Turner and Mr. Elmsley for the respondent, were not heard.*

The Lord Chancellor:—I find that all the noble and learned Lords, who attend on this argument, are clearly of opinion that the judgment of the Master of the Rolls is right. The whole case must depend on the allegations of the **[17]** bill, there being no matters out of the bill which can be brought into question, except so far as they are referred to by the bill. After the House has heard the very able arguments that have been adduced in opposition to the judgment of the Master of the Rolls, we are all of opinion that there is no ground for impeaching that judgment.

The whole question seems to me to turn upon this (that is to say, for the purpose of this decision, it has not been otherwise contended at the bar, and if it had been, it is quite clear that the contention could not be maintained), that a foreign Sovereign,

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* The "reasons" annexed to the respondent's printed case, signed by Sir C. Wetherell, Mr. Turner, and Mr. Elmsley, were,—

"First, Because the respondent, being an independent sovereign Prince, is not liable to be sued in any Court in this country.

"Second, Because the immunity of the respondent from suit, as an independent sovereign Prince, cannot be affected by his being a subject of her Majesty, in cases in which he is sued in respect of matters not transacted by him as such subject; and although it is stated in the bill that the respondent is a subject of her Majesty, as well as King of Hanover, yet it also appears by the bill, that none of the matters therein set forth, and in respect of which relief is prayed and discovery sought from the respondent, were transacted by him as a subject of her Majesty.

"Third, Because the immunity or exemption of a foreign independent sovereign Prince from being sued in the Courts of this country, cannot be less than that of an ambassador, and ambassadors are exempt from such suit by common and statute law.

"Fourth, Because it appears by the bill that the matters therein complained of are not the subject of municipal jurisdiction, being either matters of state or political transactions, which cannot be dealt with in the Courts of this country.

"Fifth, Because the maintenance of this suit is inconsistent with principles of public policy."

(See also the argument in the Rolls, 6 Beav., p. 10.)

coming into this country, cannot be made responsible here for an act done in his sovereign character in his own country; whether it be an act right or wrong, whether according to the constitution of that country or not, the Courts of this country cannot sit in judgment upon an act of a Sovereign, effected by virtue of his Sovereign authority abroad, an act not done as a British subject, but supposed to be done in the exercise of his authority vested in him as Sovereign.

[18] That is the sole question; therefore I avoid the question which does not necessarily arise,—how far a foreign Sovereign, coming into this country, is amenable at all. I do not enter upon that question, because it does not necessarily arise upon the proper disposal of the matter now before us, as I am of opinion that, upon the face of this bill, the allegations show that the acts could not have been done, and were not done in any private character, but that they were done, whether right or wrong, in the character of the Sovereign of a foreign state.

My Lords, that must be found upon the face of the bill; or rather, I should say, the converse ought to be found upon the face of the bill; because, before you can raise a question how far a foreign Sovereign is answerable for a private transaction in the case of some person complaining of an act done by him as an individual, the Court would require that there should appear clearly upon the face of the bill such a case as gives the Court jurisdiction. The Master of the Rolls seems to have thought there was a nice balance as to whether the allegations amounted to acts done by virtue of sovereignty abroad, or whether they were merely to be considered as acts done in a private character. He seems to have held that whilst there was any ambiguity upon that subject, the Court could not entertain a bill, which did not distinctly state a matter bringing it within the jurisdiction of the Courts of Equity in this country. Certainly, looking at these pleadings, there does not appear to me to be any ambiguity at all, but that the whole transaction arose from acts done in the exercise of rights of sovereignty, **[19]** claimed to be vested in those who were the actors. The commencement of the bill, the foundation of the whole transaction, in my mind, sufficiently shews that.

There are, in point of fact, but two passages which seem to me to be necessary to be adverted to for the purpose of showing the authority under which the acts complained of are alleged to have taken place. The bill states, "That pending the aforesaid revolutionary movement, and before the same could be subdued, a decree of the Germanic Diet of Confederation was made or passed, bearing date the 2nd of September, 1830, whereby your orator's brother, William, Duke of Brunswick, was invited to take upon himself provisionally the government of the said Duchy, and the Diet left it to the legitimate *agnati* of your orator to provide for the future government of the said Duchy."

That, at least, was an act of sovereign state; it was by virtue of a decree of the Germanic Diet. Whether the constitution of Germany authorized it or not, is a question we have no power to interfere with, or to inquire into. There is no allegation that, according to the constitution of Germany, it was not a legal act; but there is upon the face of the bill that which is the foundation of all, namely, the decree of the Germanic Diet, depriving the plaintiff of the sovereignty of the Duchy, and appointing his brother William to take his place, and that the Diet left it to the legitimate *agnati* to provide for the future government of that Duchy.

Then the bill alleges, "That his late Majesty King William the Fourth, as King of Hanover, was a member of the said Germanic Diet of Confederation, and **[20]** that his said late Majesty, as such King of Hanover, or the Duke of Cambridge, as his Viceroy or proxy, voted in support of the said decree."

Then comes the instrument under which the defendant, or his predecessor, the Duke of Cambridge, acted. That is stated upon the face of the bill; it is part of the statement, and when you come to consider it, I do not apprehend there can be a doubt upon the face of that instrument—which is the foundation upon which all those transactions have taken place—that it does allege that those acts are acts of persons claiming to have the right so to act by virtue of their sovereign authority. It is stated to have been made between his late Majesty King William the Fourth, and William, Duke of Brunswick. The bill states it: "We, William the Fourth, by the grace of God, King of the United Kingdom of Great Britain and Ireland, and of Hanover, Duke of Brunswick and of Luneburg, and we, William, by the

grace of God, Duke of Brunswick and of Luneburg, make known," etc.; then it states, "moved by the interests of our house, whose well-being is confided to us," etc., "have thought it necessary to consider what measures the interests (rightly understood) of his Highness Charles, Duke of Brunswick, the preservation of the fortune now in his hands," etc.; "and whereas after the dissolution of the German empire, the powers of supreme guardianship over the princes of the empire, which up to that period had appertained to the Emperor, devolved to the heads of sovereign states" (see the instrument, *supra*, pp. 3 and 4).

Your Lordships will observe that they say the duty **[21]** had devolved upon them, and they state how it had devolved upon them, that that right which had originally belonged to the Emperor of Germany had now devolved to them as the heads of sovereign states. As such heads of sovereign states, and by virtue of the law and the constitution to which they refer, they are authorized to give directions for the appointment of a guardian, not as individuals, but as the heads of sovereign states, who, by the decree of the Germanic Diet, had previously deprived the appellant of his sovereign authority, which, taken from him, they had conferred upon his brother.

All the allegations of this bill follow from that act. The Duke of Cambridge is, under the authority of a decree of William the Fourth, King of Hanover, and of the reigning Duke of Brunswick, appointed to be the acting guardian of this deposed sovereign, and in that character it is alleged that he received certain sums of money; and that at a subsequent period when the Duke of Cumberland became King of Hanover, that duty devolved upon him, and the Duke of Cambridge then accounted to him, as the then guardian of the deposed sovereign, and in that character, from the beginning to the end of the bill, that property alleged to have come into the hands of the defendant, is stated to have been received by him under the authority of that appointment to which I have referred.

It is true, the bill states that the instrument was contrary to the laws of Hanover and Brunswick, but, notwithstanding that it is so stated, still if it is a sovereign act, then, whether it be according to law or not according to law, we cannot inquire into it. If it were a private transaction, as in some of the instances referred to in **[22]** the argument was the case, then the law upon which the rights of individuals may depend, might have been a matter of fact to be inquired into, and for the Court to adjudicate upon, not as a matter of law, but as a matter of fact. But, as I stated at the beginning, if it be a matter of sovereign authority, we cannot try the fact whether it be right or wrong. The allegation that it is contrary to the laws of Hanover, taken in conjunction with the allegation of the authority under which the defendant had acted, must be conceded to be an allegation, not that it was contrary to the existing laws as regulating the right of individuals, but that it was contrary to the laws and duties and rights and powers of a Sovereign exercising sovereign authority. If that be so, it does not require another observation to shew, because it has not been doubted, that no Court in this country can entertain questions to bring Sovereigns to account for their acts done in their sovereign capacities abroad.

For these reasons it does appear to me, that as the bill fails in stating facts bringing the case within the cognizance of the Courts of Equity in this country, the demurrer, which assumes all the facts to be correct as stated, was very properly allowed by the Master of the Rolls. I move, therefore, that your Lordships do affirm his judgment.

Lord Lyndhurst.—I am entirely of the same opinion. None of the acts stated upon the face of this bill was done in this country, nor, as it appears to me, by the defendant in his character of a subject of this country. They were all done abroad; and admitting that circum-**[23]**-stances may exist in which a foreign Sovereign may be sued in this country for acts done abroad—about which I say nothing, because it is not necessary to decide such a question upon the present occasion—there are no such facts stated upon the face of this bill as to justify us in entertaining a suit of this description. 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. No such case appears to me to be stated on the face of this bill, but as it seems to me, upon the proper construction of this instrument, directly the contrary appears. Without, therefore, further entering into the consideration of this question, I am of opinion that the judgment of the Master of the Rolls must be affirmed.

Lord Brougham.—I entirely agree with both my noble and learned friends upon this subject. I had no doubt whatever upon it in the course of the argument. The moment you come to look at the facts disclosed in this bill, which the demurrer admits—for the argument's sake at least admits—and denies the equitable jurisdiction and relief sought; the moment you see those facts, it is clear in every way, that it is not a case for the interference of a Court of Equity here. It would have been necessary where two foreign princes come 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.

I will not argue the question as to how far one **[24]** Sovereign might sue another in respect of any matter not a matter of state; it is unnecessary, for that is not the case here. If that had been the case, it might have been fit for us to discuss the point. It is not the case, however, and I agree with my noble and learned friend, (Lord Lyndhurst,) that that not being the case here, there is no occasion to say, one way or the other, how we should deal with such a case if it were to arise. This is quite clear, that, at all events, it ought to have been shewn that there were private transactions in order to make it possible that the Court could have jurisdiction. But on the contrary, it is clear that these are acts between the parties in their sovereign capacities; they are clearly matters of state upon which the question arises. It is not at all necessary to say that, supposing a foreign Sovereign, being also a naturalised subject in this country, had a landed estate in this country, and entered into any transactions respecting it, as a contract of sale or mortgage; it is not necessary to say that a Court of Equity in this country might not compel him specifically to perform his contract. That question does not arise here; there is nothing like it; and I do not say that the Courts here would not have jurisdiction in that case, as in the cases of all other parties, subject to their jurisdiction. But this is a case of a foreign Sovereign doing an act assumed to be in his capacity of Sovereign, he assuming that he has a right to do that act, which assumption is denied by the other party. Although these are matters of state that are in controversy between these parties, the bill, instead of setting forth—what ought to have been done clearly—that they were private transactions subject to the jurisdiction of the Courts in this country, sets **[25]** forth the very reverse, and thereby, in my opinion, excludes the jurisdiction.

I have, therefore, no hesitation whatever in agreeing with my noble and learned friends that the Master of the Rolls has come to a perfectly right decision, ably supported by him in a very elaborate argument, and that his decision ought to be affirmed, with costs.

Lord Campbell.—I am of the same opinion. In the first place, it seems to me that there is no ground at all for contending that this is *res judicata*. When the matter came before Lord Lyndhurst, he did quite right in refusing to quash the letter missive. What appeared before that noble and learned Judge? Why, that there was a bill filed against his Royal Highness "Ernest Augustus, Duke of Cumberland and Teviotdale, in Great Britain, and Earl of Armagh in Ireland, King of Hanover;" and that a letter missive, according to the common proceeding of the Court where a Peer is sued, had issued. Then an application was made to his Lordship to quash that letter missive (see 6 Beavan, p. 9, note). I am of opinion that he did quite right in refusing the application, because peradventure the bill might have disclosed matters that would have shewn that the Duke of Cumberland was liable to be sued in the Court of Chancery. If he had been a trustee of a marriage settlement, while he resided within this realm, and had become liable, in the execution of the trust which he had undertaken, and which he was not properly executing, I am by no means prepared to say that the Court of Chancery would not have had jurisdiction over him. **[26]** Therefore inasmuch as it was possible that he might have been properly sued in the Court of Chancery, the letter missive was not at all irregular.

But when we come to look at the bill itself, and the cause of suit, that is therein disclosed, I have no doubt that the demurrer is proper. You cannot say that a defendant, after appearing, cannot demur to a bill if it does not disclose any cause of suit over which a Court of Equity has jurisdiction. Well, then, is it not quite

clear that this bill does not disclose any matter over which the Court of Chancery has jurisdiction?

I think the learned gentlemen who have argued this case, with very great ability, were rather sanguine in almost assuming it as a postulate that the Duke of Cambridge might have been sued for this matter. I have most serious doubts upon that point, because even if he had been sued, it would equally have been a matter of state; the same questions would have been submitted to the Court of Chancery, namely, Whether the King of England as King of Hanover, and William, Duke of Brunswick, acting as sovereigns, had jurisdiction to do the acts which are impeached by this bill. The inclination of my opinion certainly is, that the Duke of Cambridge could not have been sued in a Court of Equity in respect of what he had done under this instrument. But when we find that the party sued is a Sovereign Prince, that he is King of Hanover, and an independent sovereign, then, at all events, it becomes indispensably necessary that the bill by which he is sued in an English Court of Equity should disclose matters over which that Court has jurisdiction.

It has been clearly stated by my noble and learned [27] friends that the question that is raised here is as to the validity of an act of sovereignty, because the bill would have been nothing without that allegation that the instrument was absolutely null and of no effect. But that instrument clearly professes to be made in the exercise of powers which those who were parties to it have as sovereigns, and the question of its validity must depend upon whether they have the power to do those acts of sovereignty which they profess to do. I am quite clear, therefore, that this is a matter over which the Court of Chancery has no jurisdiction, and that the demurrer was properly allowed.

I have the most sincere deference for the Court of Chancery, acting within its jurisdiction. I believe there never was a tribunal established in any country which is more entitled to respect, but still there are limits to its jurisdiction, it cannot do every thing. The Lord Chancellor, I presume, would not grant an injunction against the French Republic marching an army across the Rhine or the Alps. The Court of Chancery must be kept within its jurisdiction, and then I am sure it confers the highest benefits upon the community. I think it was by this bill called upon to exceed its jurisdiction, and that the Master of the Rolls was acting in conformity to the just principles of the law of this country in ordering the bill to be dismissed.

[It was ordered, that the appeal be dismissed, and the decree complained of be affirmed, with costs.]

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[28] EDWARD THOMAS FOLEY,—*Appellant;* THOMAS HILL and Others,—*Respondents* [July 31, August 1, 1848].

[Mews' Dig. i. 42, 1007; ix. 76; xi. 988. S.C. in 8 Jur., 347; 1 Ph. 399; 13 L.J. Ch. 182. On point as to relation between banker and customer, considered in *St. Aubyn* v. *Smart*, 1867, L.R. 5 Eq. 189; *A.-G.* v. *Edmunds*, 1868, L.R. 6 Eq. 390; *Moxon* v. *Bright*, 1869, L.R. 4 Ch. 294; *Summers* v. *City Bank*, 1874, L.R. 9 C.P. 587; *Marten* v. *Rocke*, 1885, 53 L.T., 1948. Distinguished on point as to limitation (1 Ph. 399; cf. 2 H.L.C. pp. 41, 42) in *In re Tidd* (1893), 3 Ch. 156, and in *Atkinson* v. *Bradford Third Equitable, etc., Society*, 1890, 25 Q.B.D. 381.]

Banker and Customer—Accounts not complicated, subject for action, and not for bill.

The relation between a Banker and Customer, who pays money into the Bank, is the ordinary relation of debtor and creditor, with a superadded obligation arising out of the custom of bankers to honour the customer's drafts; and that relation is not altered by an agreement by the banker to allow the interest on the balances in the Bank.

The relation of Banker and Customer does not partake of a fiduciary character, nor bear analogy to the relation between Principal and Factor or Agent, who is *quasi* trustee for the principal in respect of the particular matter for which he is appointed factor or agent.

Held, therefore, that an account between Bankers and their customer, not long