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

nation of Portugal;" and, on the same day, issued an attachment in the same court against the moneys, &c. which were or should come into the hands of De Brito. The attachment issued on an affidavit, sworn by De Haber in the mayor's court, wherein he deposed: "That Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, as reigning Sovereign and as supreme head of the nation of Portugal, is justly and truly indebted to him, this deponent, in the sum of 12,136l. for money had and received by Her said Majesty Doña Maria da Gloria, Queen of Portugal, for and on behalf of the said nation of Portugal, for the use of this deponent, **[198]** and for money taken by Her said Majesty Doña Maria da Gloria, Queen of Portugal, by and on behalf of the said nation of Portugal, from this deponent's banker; with interest thereon."

The notice of attachment (*a*)[1] to De Brito referred to the action, describing the defendant and her character as in the last mentioned affidavit, and attached all such moneys, &c., as the garnishee then had, or which might thereafter come into his hands or custody, "of the said defendant, to answer the said plaintiff in the plea aforesaid."

The affidavit on which the present rule was obtained further stated that deponent had been informed and believed that the last mentioned claim of De Haber arose upon the same cause of action as that in the first action; and it repeated, as to this last action, the facts already mentioned to have been deposed to as to the first.

The affidavit also stated that another attachment issued in each action against Christy, Forster, Scholefield, Shadbolt, Oxley and Tayler, the trustees of the London Joint Stock Bank, as to which the circumstances did not differ from those of the attachments first mentioned.

In answer, on the part of De Haber, an affidavit by the deputy registrar of the mayor's court was put in, which stated the custom of London as to foreign attachments. It stated, further, that the affidavit on which the mayor's court granted the attachment "is not considered in the nature of an affidavit to hold to bail, and is not tested by the rules applicable to such affidavits, but is taken as a protection to the court and suitors, **[199]** that no attachment should be made without any real debt existing between the plaintiff and defendant; and that such affidavit forms no part of the issue between the plaintiff and garnishee." "That, if upon such affidavit there should appear any patent defect in the statement or consideration of the plaintiff's debt, or such a debt as will not sustain any attachment, the court will permit a motion to be made to dissolve the attachment upon such grounds: but such defect must appear upon the face of such affidavit; and the practice had been not to allow any question affecting merits to be entered into upon such summary proceeding; but that the said garnishee may, at any time, make an application to the court to dissolve an attachment on special grounds. That no plea upon the trial of an attachment can be entered on behalf of a defendant, because such defendant is not in court and therefore cannot be a party to the issue; but, under the garnishee's usual plea of nil habet, the court is accustomed to give great latitude to all defences: but that the garnishee is not restricted to such plea, but may plead any special matter."

In last Easter term (*a*)[2],

Borthwick, for De Haber, shewed cause. It is true that a foreign Sovereign, sued in respect of transactions entered into exclusively in the character of Sovereign, cannot be compelled to appear in an English Court of Justice. But the privilege may be waived; and it is waived if it is not properly pleaded. That clearly ap-**[200]**-pears from Lord Langdale's judgment in *The Duke of Brunswick* v. *The King of Hanover* (*a*)[3]. The case is somewhat analogous to that of an action brought against the governor of a foreign possession of the Crown for an act done in such foreign possession; the governor, if he insists upon his right to do the act in his character of governor, must plead the matter specially; *Mostyn* v. *Fabrigas* (*b*). The Queen of Portugal, by not

(*a*)[1] Set out at length in the judgment, post, p. 205.

(*a*)[2] May 10, 1851. Before Lord Campbell C.J., Patteson, Wightman, and Erle Js.

(*a*)[3] 6 Beav. 1, in the Rolls. S. C. in Dom. Proc., affirming the above decree, 2 H. L. Ca. 1.

(*b*) 1 Cowp. 161, 172, 3. See note to S. C. in 1 Smith's Lead. Ca. 363, 368 b. c. (3d ed.).

pleading to the jurisdiction, has submitted to it. But, further, the present question is not between the plaintiff and the Queen of Portugal, but between the plaintiff and the garnishee. The defendant cannot have a prohibition, for want of jurisdiction, before appearing in the Inferior Court; and the garnishee, to take advantage of the objection, should plead it there; *Cook* v. *Licence* (1 Ld. Raym. 346), 6 Bac. Abr. 589, (7th ed.), tit. Prohibition (K). The prohibition will then go, if the Inferior Court refuse the plea so as to shew unequivocally an intention to exceed the jurisdiction. If the garnishee had pleaded only nil habet, the lord mayor's court would unquestionably have had the right to try an issue on that plea. He might have pleaded to the jurisdiction; for he can plead whatever the defendant can; *Masters* v. *Lewis* (1 Ld. Raym. 56). Even if the Queen of this realm had chosen, as she might, to sue as an individual (*e*), she must have answered to a bill of discovery touching the matter of the suit. Where an objection is taken to the jurisdiction **[201]** of a County Court, the party becomes entitled to the writ of prohibition by appearing and shewing the matter before the Judge, who, if he then proceed, may be prohibited; *Thompson* v. *Ingham* (14 Q. B. 710). How can the plaintiff here know in what character the Queen of Portugal opposes the attachment? [Lord Campbell C.J. Your affidavit in the lord mayor's court, upon which your attachment is founded, states that she is sued as reigning Sovereign of Portugal.] That is not properly before the Court; nor is the affidavit really the foundation of the attachment: it is merely required to protect the court below from acting on a frivolous suggestion. The fact of the oath need not be averred in a plea of foreign attachment; *Banks* v. *Self* (*b*)[1]. There is at least enough doubt to induce the Court not to prohibit without requiring a declaration in prohibition.

Sir F. Thesiger and Bovill, for the Queen of Portugal, contrà. This is a stronger case than *Wadsworth* v. *Queen of Spain* (ante, p. 171), because it appears that here the original cause of action arose entirely in Portugal; the money, in respect of which the plaintiff sues, never was in England. [Lord Campbell C.J. The fund attached would appear to belong to the Queen of Portugal in the same character as that in which she is a debtor, if at all.] That is undoubtedly so. Assuming, on the grounds urged in *Wadsworth* v. *Queen of Spain* (ante, p. 171), that the action does not lie against the Queen of Portugal, it does appear that the lord mayor's court has ex-**[202]**-ceeded its jurisdiction. The object of the attachment is to compel a party to appear in a cause which is not within the competence of that court. It is said that the garnishee ought to have pleaded to the jurisdiction: but, even if that were so, the Court will not, on account of his not having so pleaded, allow this action to go on against the Queen of Portugal. And, further, he was not bound to plead to the jurisdiction: as regards himself, the only question is whether he is indebted to the defendant: he may be entirely ignorant of the nature of the plaintiff's claim on the defendant. It may be questionable whether the dictum in *Masters* v. *Lewis* (1 Ld. Raym. 56), be correct, that "garnishment cannot be, but where the garnishee is liable to the action of the defendant; for the garnishee may plead all things that the defendant might have pleaded." [Lord Campbell C.J. It is the dictum of no less a Judge than Lord Holt. Wightman J. And it seems very reasonable. Lord Campbell C.J. The garnishee may in some cases know what the plaintiff's claim is. Wightman J. It is said that the garnishee may plead that he has no money of defendant in hand, "or other special matter" (*b*)[2].] Supposing him to have that right, his abstaining from the exercise of it cannot oust the original debtor from the right of denying the jurisdiction. Again, the Court, even on the suggestion of a stranger, will prohibit the Inferior Court from exceeding its jurisdiction; Com. Dig. Prohibition (E), 2 Inst. 607. It is true that, in ordinary cases, a party sued appears, before applying for a prohibition; *Sparks* v. *Wood* (6 Mod. 146): and a plea to the jurisdiction may be generally proper; *Lucking* v. *Denning* (1 Salk. 201): but an ap-**[203]**-pearance and plea would be absurd and contradictory in the present case, where the objection is that the defendant cannot be called upon to appear at all. In a plea to the jurisdiction, the defendant must appear in person; 6 Bac. Abr. 235 (7th ed.), tit. Pleas and Pleadings (E), 2; now where the party is not bound to appear, this Court will prohibit the enforcing process to compel appearance; *Vaughan* v. *Evans*

(*e*) See 16 Vin. Ab. 536, tit. Prerogative of the King (Q, 4).
(*b*)[1] Note to *Harington* v. *Macmorris*, 5 Taunt. 234.
(*b*)[2] Bohun's Privilegia Londini, 256 (3d ed.).

(2 Ld. Raym. 1408). It is true that, by instituting proceedings in an English Court, the Queen of Portugal might make herself liable to answer a bill relating to those proceedings: even so, however, she would not be liable to answer another party in a different matter; *The Duke of Brunswick* v. *The King of Hanover* (6 Beav. 1, 38; 2 H. L. Ca. 1). But, in fact, she has never been a party to this proceeding at all. The privilege of a foreign Sovereign, like that of ambassadors, rests on the law of nations; stat. 7 Ann. c. 12, was only declaratory, and was passed to conciliate the Czar; *Triquet* v. *Bath* (3 Burr. 1478, 1480). Suppose the Queen instituted proceedings against the garnishee in Portugal for the debt: could he set up the English attachment as a defence? [Lord Campbell C.J. That is a question which we cannot answer.]

Lord Campbell C.J. We will take time to consider our judgment. But, without prejudice to any point which has been argued in this case, I must express very great regret that the action should have been brought. I have no hesitation in saying that such actions do not lie; and I am very sorry to find that this has been persisted in. The only question is as to **[204]** the proper mode of stopping it, whether by a plea in the Court below or by prohibition.

Cur. adv. vult.

Lord Campbell C.J., in this term (May 28th), delivered the judgment of the Court in both cases.

De Haber against *The Queen of Portugal.*

We are of opinion that the rule for a prohibition in this case ought to be made absolute.

The plaintiff has commenced an action of debt in the court of the Lord Mayor of London against "Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, as reigning Sovereign and supreme head of the nation of Portugal:" and, by an affidavit laid before us, it appears that the plaintiff's alleged cause of action is in respect of a sum of Portuguese money equivalent to 12,136l. sterling, which he had in the hands of one Francisco Ferreiri of Lisbon, banker, at the period when Don Miguel, pretending to the Crown of Portugal, was driven out of that country, and which was by the said Franciso Ferreiri paid over to the Portuguese Government now represented by the Royal defendant. The plaintiff, having entered his plaint, proceeded according to the custom of foreign attachment in the City of London, as if the defendant were subject to the jurisdiction of the lord mayor's court and the cause of action had arisen within that jurisdiction; and he sued out a summons for the defendant to appear and answer the plaintiff in the plea aforesaid. A return being made by the serjeant at mace, that the said defendant had nothing within the said city or liberties thereof, whereby **[205]** she can be summoned, nor was to be found within the same (*a*), the plaintiff swore an affidavit, in which he stated that the defendant, "as reigning Sovereign and as supreme head of the nation of Portugal, is justly and truly indebted to him" "in the sum of 12,136l., for money had and received by Her said Majesty, Doña Maria da Gloria, Queen of Portugal, for and on behalf of the said nation of Portugal, for the use of this deponent, and for money taken by Her said Majesty Doña Maria da Gloria, Queen of Portugal, by and on behalf of the said nation of Portugal, from the deponent's banker, with interest thereon."

The defendant being solemnly called, and not appearing before the lord mayor, the plaintiff alleged, by his attorney, that Senhor Guilherne Candida Xavier de Brito, of the City of London, the garnishee, had money, goods and effects of the defendant in his hands, and prayed process according to the said custom to attach the said defendant by the said money, goods and effects in the hands of the garnishee as aforesaid, so that the defendant may appear in the lord mayor's court to answer the plaintiff in the plea aforesaid. Thereupon the Judge presiding in the Court awarded an attachment against the defendant as prayed, directed to the serjeant at mace, which that officer immediately executed, leaving with the garnishee a notice in the terms following.

(*a*) The proceedings in the lord mayor's court (except the affidavits of debt in the two suits, and the notices of attachment in the last) were not expressly deposed to: but it was assumed in the argument that the regular course of foreign attachment had been pursued.

"Senhor Guilherne Candida Xavier de Brito. "28th March, 1851.

[206] "Take notice that, by virtue of an action entered in the lord mayor's court, London, against Her Most Faithful Majesty Doña Maria da Gloria, Queen of Portugal, as reigning Sovereign and as supreme head of the nation of Portugal, defendant, at the suit of Maurice de Haber, plaintiff, in a plea of a debt upon demand of 24,000l., 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 licence of the said Court.

"G. T. R. REYNAL, Plaintiff's Attorney, Lord Mayor's Court Office, Old Jewry.
"J. Z. GORE, Serjeant at Mace."

On the second day of Easter term this rule for a prohibition was applied for and obtained on behalf of the Queen of Portugal.

Cause being shewn against this rule and a similar rule in a similar action brought against Her Most Faithful Majesty the Queen of Spain, various questions respecting foreign attachment were discussed, which we do not feel it necessary to determine, as we think that, upon simple and clear grounds, there has been an excess of jurisdiction by the court of the Lord Mayor of London, against which we are bound to grant a prohibition at the prayer of the defendant.

In the first place, it is quite certain, upon general principles, and upon the authority of the case of *The* **[207]** *Duke of Brunswick* v. *The King of Hanover* (*a*), recently decided in the House of Lords, that an action cannot be maintained in any English Court against a foreign potentate, for anything done or omitted to be done by him in his public capacity as representative of the nation of which he is the head; and that no English Court has jurisdiction to entertain any complaints against him in that capacity. Redress for such complaints affecting a British subject is only to be obtained by the laws and tribunals of the country which the foreign potentate rules, or by the representations, remonstrances or acts of the British Government. To cite a foreign potentate in a municipal court, for any complaint against him in his public capacity, is contrary to the law of nations, and an insult which he is entitled to resent.

The statute 7 Ann. c. 12, passed on the arrest of the Russian Ambassador, to appease the Czar, has always been said to be merely declaratory of the law of nations, recognised and enforced by our municipal law; and it provides (sect. 3) that all process, whereby the person of any ambassador, or of his domestic servant, may be arrested, on his goods distrained or seized, shall be utterly null and void. On the occasion of the outrage which gave rise to the statute, Lord Holt was present as a Privy Councillor to advise the Government as to the fit steps to be taken; and, with his sanction, seventeen persons, who had been concerned in arresting the ambassador, were committed to prison that they might be prosecuted by information at the suit of the Attorney General. Can we doubt that, in the **[208]** opinion of that great Judge, the Sovereign himself would have been considered entitled to the same protection, immunity and privilege as the minister who represents him?

Let us see then what has been done by the Lord Mayor of London. On a plaint being entered in his court against "Doña Maria da Gloria, as reigning Sovereign and supreme head of the nation of Portugal," for what she had done "for and on behalf of the said nation," he summons her to appear before him; and, she being solemnly called and making default, he, with full knowledge that she was so sued, issues an attachment against her for this default, to compel her to appear. Under this attachment, all her money, goods and effects within the City and liberties of London are ordered to be seized; if she does not obey the mandate within a year and a day, these funds are to be confiscated or applied to the satisfaction of the plaintiff's demand, without any proof of its being justly due; and she can only get rid of the attachment by giving bail, to pay the sum which the plaintiff may recover, or to render herself to prison that she may be committed to the Poultry or Giltspur Street compter. The attachment applies, not only to all the moneys, goods and effects of the Queen of Portugal then in the hands of the garnishee, but to all that shall thereafter come into

(*a*) 2 H. L. Ca. 1, affirming the decree of the Master of the Rolls in S. C. 6 Beav. 1.

his hands. The process is studiously framed to be applicable to property of the Queen as "supreme head of" the Portuguese nation. It appears from the affidavit that the plaintiff had entered a former plaint against the Queen of Portugal, which, he suggested, was against her in her individual capacity; that, upon an attachment, the garnishee pleaded nil habet; and that upon this issue the **[209]** jury found a verdict for the garnishee, because all the funds in the hands of the garnishee were proved to belong to the defendant in her public capacity as Sovereign of the dominions which she governs. Were the defendant now to plead nil habet, the verdict must be against him; for the funds which he holds belong to the defendant in the capacity in which she is sued. While this attachment stands, should any money raised by loan, or any munitions of war, purchased for the use of the Portuguese Government, be found within the City of London or the liberties thereof, they are all liable to be seized for the benefit of the plaintiff.

It may be right that we should mention two authorities which we have met with in our researches upon this subject, although they were not referred to in the argument, as they seem at variance with the opinion we have formed. Bynkershoek, in his treatise De Foro Legatorum, ch. iv.(*a*), discussing the question whether the goods of a sovereign prince in a foreign State are liable to be judicially arrested or attached, says: "In causâ civili cum id inter privatos obtineat, ubicunque arresta frequentantur, ego nullus animadverto, cur non idem obtinere oporteat quod ad bona externorum Principum. Si ab arresto Principis temperemus ob sanctitatem personæ, quis bona Principis in alieno imperio æquè sancta esse dixerit? usu gentium invaluit, ut bona, quæ Princeps in alterius ditione sibi comparavit, sive hæreditatis, vel quo alio titulo acquisivit, perinde habeantur, ac bona privatorum, nec minùs, quam hæc, subjiciantur oneribus et tributis." But this author, who is well known to have an antipathy to crowned heads and to monarchical government, admits that other jurists differ from **[210]** him; and he goes on to cite a decision in his own country which completely overturns his doctrine. "In the year 1668, certain private creditors of the King of Spain arrested three ships of war of that kingdom, which had entered the port of Flushing, that the pursuers might thus obtain satisfaction for their debt, the King of Spain being cited to appear at a certain day before the Judges of the Court of Flushing: but, upon the remonstrance of the Spanish Ambassador, the States General, by a decree of 12th December 1668, ordered the authorities of the province of Zealand to liberate the Spanish ships of war, and to allow them freely to depart, at the same time directing a representation to be made to the Spanish Government to do justice to the Dutch citizens, lest it should be necessary to resort to reprisals." And there can be no doubt that, according to the law of nations, reprisals would be the appropriate remedy, not a judicial citation before a municipal court, to be enforced by seizure of national property.

In Selden's Table Talk (Singer's edition, p. 108 (tit. Law, § 3)), there are the following words, supposed to be spoken by that profound lawyer himself.

"The King of Spain was outlawed in Westminster Hall, I being of counsel against him. A merchant had recovered costs against him in a suit, which because he could not get, we advised to have him outlawed for not appearing, and so he was. As soon as Gondomar heard that he presently sent the money, by reason, if his master had been outlawed, he could not have the benefit of the law, which would have been very prejudicial, there being then many suits depending betwixt the King of Spain, and our English merchants."

[211] The fact here stated seems to have been credited by Lord Chancellor Thurlow, who, in *Nabob of the Carnatic* v. *East India Company* (1 Ves. jun. 371, 386, note (64)), "observed, that the King of Spain had been once outlawed by Selden's advice to prevent him from taking advantage of his suit." But he adds: "The outlawry was bad enough." Others have doubted whether the King of Spain ever was outlawed in the manner supposed. Legge, in his Law of Outlawry (London, 1779), p. 12, alluding to it, says: "This was a very strange case, if for costs only, as it does not seem to be warrantable by law."

Such an extract from an amusing book of anecdotes cannot be considered any authority for the position that a sovereign prince may be sued as such in our municipal courts, and that property belonging to him in his public capacity may be seized to

(*a*) Opera, vol. 2, p. 151. Leyden, 1767, fol.

compel an appearance. The statement is in no way authenticated by Selden himself, and is merely a loose report of what is supposed to have fallen from him in conversation. It cannot be accurate; as the outlawry is first supposed to have been for non-payment of costs, and, secondly, for not appearing: and, according to the usual practice, it could not have been in Westminster Hall. We have caused search to be made for the record; but it is not forthcoming. There may de facto be judgment of outlawry against any sovereign prince who does not appear after being proclaimed the requisite number of times at the County Court or Court of Hustings, no inquiry being made whether the defendant be an alien or a natural born Englishman, an emperor or a peasant: but this proceeding is clearly irregular; and all concerned in it **[212]** would be liable to punishment. Till stat. 2 & 3 W. 4, c. 39 (sect. 5), there could have been no outlawry except upon a capias, which could not be lawfully sued out against a peer or member of the House of Commons, much less against a sovereign prince. After outlawry, the outlaw is to be seized wherever he can be found, and imprisoned in salvâ et arctâ custodiâ; all his personal property is forfeited to the Queen of England; and she is entitled to the profits of all his lands. Such a proceeding is manifestly inapplicable to a foreign Sovereign, who must be supposed to be in his own dominions, and, if he were in England, could not be so sued without a breach of the law of nations and of our municipal law. The suits alleged to have been pending between the King of Spain and the English merchants, if there were any, were probably actions brought by him on bills of exchange, or arising out of some of the commercial transactions in which His Majesty was then engaged. For such matters a foreign Sovereign might and may still sue in our Courts of Justice: but no authority can be found for his being sued here as a Sovereign.

In the case of the "Prince Frederick," before Lord Stowell as Judge of the Admiralty, the same view of the subject was taken by that greatest of jurists, although, from a compromise, no formal judgment was pronounced. There a Dutch ship of war had been saved from shipwreck by English sailors, who libelled her for the salvage. Objection being made that the Court had no jurisdiction, a distinction was attempted, that the salvors were not suing the King of the Netherlands, and that, being in possession of, and having a **[213]** lien upon, a ship which they had saved, the proceeding might be considered in rem. But Lord Stowell saw such insuperable difficulties in judicially assessing the amount of salvage, the payment of which was to be enforced by sale, that he caused a representation to be made on the subject to the Dutch Government, who very honourably consented to his disposing of the matter as an arbitrator. The case of the "Prince Frederick" is not in print; but we had an account of it from the Queen's advocate.

Notwithstanding the dictum of Bynkershoek, and the outlawry of the King of Spain, supposed to be related by Selden, we cannot doubt that the awarding of the attachment in the present case by the lord mayor's court was an excess of jurisdiction, on the ground that the defendant is sued as a foreign potentate.

Therefore, the circumstance that the cause of action, if there were any, arose out of the jurisdiction of the lord mayor's court, need not be relied upon. Nevertheless, after the strong assertions at the Bar that this is immaterial where the defendant does not appear, we think it right to say that, having examined the authorities, we entertain no doubt that the process of foreign attachment can only be duly resorted to where the cause of action arose within the jurisdiction of the Court from which it issues. The garnishee is safe by paying under the judgment of the Court: but the objection that the cause of action did not arise within the jurisdiction of the Court, if properly taken, must prevail. No agreement of counsel to abstain from making the objection can alter the law of the land, which says that an Inferior Court can only hold plea where the cause of action **[214]** arises within the local limits to which its jurisdiction by charter or custom is confined.

We have now to consider whether we can grant the prohibition on the application of the Queen of Portugal before she appears in the lord mayor's court. The plaintiff's counsel argue that, before she can be heard, she must appear and put in bail, in the alternative, to pay or to render. It would be very much to be lamented if, before doing justice to her, we were obliged to impose a condition upon her which would be a further indignity, and a further violation of the law of nations. If the rule were that the application for a prohibition can only be by the defendant after appearance, we should have had little scruple in making this an exception to the rule. But we find

it laid down in books of the highest authority that, where the Court to which the prohibition is to go has no jurisdiction, a prohibition may be granted upon the request of a stranger, as well as of the defendant himself; 2 Inst. 607, Com. Dig. Prohibition (E). The reason is that, where an Inferior Court exceeds its jurisdiction, it is chargeable with a contempt of the Crown as well as a grievance to the party; *Ede* v. *Jackson* (Fort. 345). Therefore this Court, vested with the power of preventing all Inferior Courts from exceeding their jurisdiction to the prejudice of the Queen or her subjects, is bound to interfere when duly informed of such an excess of jurisdiction. What has been done in this case by the lord mayor's court must be considered as peculiarly in contempt of the Crown, it being an insult to an independent Sovereign, giving that Sovereign just cause of complaint to the British Government, and having a **[215]** tendency to bring about a misunderstanding between our own Gracious Sovereign and her ally the Queen of Portugal.

Therefore, upon the information and complaint of the Queen of Portugal, either as the party grieved, or as a stranger, we think we are bound to correct the excess of jurisdiction brought to our notice, and to prohibit the lord mayor's court from proceeding further in this suit.

Rule absolute (*a*).

Wadsworth against *The Queen of Spain.*

This case nearly resembles that in which we have just given judgment, but differs from it in two particulars. 1. Here the plaintiff's affidavit does not expressly state that the action is brought against the defendant as reigning Sovereign and supreme head of the Spanish nation: and, 2. The party applying is the garnishee, after pleading nil habet.

The effect of the first difference is entirely done away with by the disclosure the plaintiff makes in the affidavit of his supposed cause of action, which is on a written instrument commonly called a Spanish Government bond in the form of a debenture entitled "Public Debt of Spain," signed by an officer of the Government of Spain as contractor, and purporting to have been issued under a decree of the Cortes sanctioned by the Regent of Spain in the name of her daughter, the present Queen, then a minor. It is quite clear that no one could pretend upon such an instrument to bring an **[216]** action against the Queen of Spain as a private individual, supposing that she could be sued in the lord mayor's court for a debt contracted by her in London in her private capacity, she having by the constitutional laws of Spain private property which would be answerable for such a debt.

There is here therefore an equal want of jurisdiction in the lord mayor's court to entertain the suit or to summon the defendant. Nevertheless, the lord mayor did entertain the suit, summoned the defendant, and, upon her making default in appearing before him, with full knowledge of the alleged cause of action, awarded an attachment against her, under which money due to her in her public capacity as Sovereign of Spain was liable to be seized.

There is in this case, therefore, the same palpable excess of jurisdiction pointed out in the case of the Queen of Portugal. We have only to consider whether there is before us a proper party to pray for a prohibition. The Queen of Spain does not make the complaint; and it is only made by the garnishee, after pleading nil habet. The plaintiff's counsel argue that the garnishee could only plead nil habet; that, if the Queen of Spain has any privilege against being sued in the Courts of this country, she only can take advantage of it; that she ought to have appeared and pleaded to the jurisdiction; that by her non-appearance she must be considered as having waived her privilege; that there has been no excess of jurisdiction at any rate as far as the garnishee is concerned; that it must be presumed that the lord mayor's court will do its duty; and that, if it decide improperly, the remedy is a writ of error by which the record may finally be brought into this Court. But we **[217]** are clearly of opinion that in a case of this sort, if the garnishee comes in time, he may be heard in this Court and a prohibition may be granted at his instance. Here there neither was nor could be any personal summons; the defendant could not be required to appear without a breach of the law of nations: the plea to the jurisdiction could only have been pleaded by her in her proper person; the garnishee has an interest in setting aside an

(*a*) See *Westoby* v. *Day*, 2 E. & B. 605.