

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Walker v. Baird and another, from the Supreme Court of Newfoundland, delivered 4th August 1892.

Present :

LORD WATSON.
LORD HOBHOUSE.
LORD HERSCHELL.
LORD MACNAGHTEN.
LORD MORRIS.
LORD HANNEN.
SIR RICHARD COUCH.
LORD SHAND.

[*Delivered by Lord Hershell.*]

This is an appeal from an order of the Supreme Court of Newfoundland. The Respondents by their statement of claim alleged that the Appellant wrongfully entered their messuage and premises, and took possession of their lobster factory and of the gear and implements therein, and kept possession of the same for a long time, and prevented the Respondents from carrying on the business of catching and preserving lobsters at their factory.

By his statement of defence the Appellant said that he was captain of H.M.S. "Emerald," and the senior officer of the ships of Her Majesty the Queen employed during the current season on the Newfoundland fisheries; that to him, as such senior officer and captain, was committed by the Lords Commissioners of the Admiralty, by com-

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mand of Her Majesty, the care and charge of putting in force and giving effect to an agreement embodied in a *modus vivendi* for the lobster fishing in Newfoundland during the said season, which as an act and matter of State and public policy had been by Her Majesty entered into with the Government of the Republic of France; that the said agreement provided amongst other things that, on the coasts of Newfoundland where the French enjoy rights of fishing conferred by the treaties, no lobster factories which were not in operation on the 1st July 1889 should be permitted, unless by the joint consent of the commanders of the British and French naval stations; that the said lobster factory of the Plaintiffs being situate on the said part of the coasts of Newfoundland, and being one that was not in operation on the said 1st July 1889, and one which was without the consent aforesaid being used and worked by the Plaintiffs as a lobster factory whilst the said agreement was in force, and such use and working thereof being prohibited by the said agreement and in contravention of its terms, the Defendant in performance of his duties did for the cause assigned enter into and take possession of the messuage and premises in the statement of claim mentioned, and of certain gear and implements; that such entry into and taking possession of the said messuage and premises, gear and implements, were made and done by the Defendant in his public political capacity, and in exercise of the powers and authorities, and in performance of the duties committed to him, and were acts and matters of State done and performed under the provisions of the said *modus vivendi*; that the action taken by the Defendant in putting in force the provisions of the said *modus vivendi* had with full knowledge of all the circumstances and events been approved and confirmed by Her Majesty as such act and

matter of State and public policy, and as being in accordance with the instructions of Her Majesty's Government. The Defendant submitted that the matters set forth in his answer to the statement of claim, and on which he rested his right to enter and take possession of the premises, were acts and matters of State arising out of the political relations between Her Majesty the Queen and the Government of the Republic of France, that they involved the construction of treaties and of the said *modus vivendi* and other acts of State and were matters which could not be inquired into by the Court.

The Plaintiffs objected that the defence did not set forth any answer or ground of defence to the action, and it was ordered by the Court that the points of law should be first disposed of. The Supreme Court of Newfoundland, after hearing argument, held that the statement of defence disclosed no answer to the Plaintiffs' claim, but gave the Defendant leave to amend.

In their Lordships' opinion this judgment was clearly right, unless the Defendant's acts can be justified on the ground that they were done by the authority of the Crown for the purpose of enforcing obedience to a treaty or agreement entered into between Her Majesty and a Foreign Power. The suggestion that they can be justified as acts of State, or that the Court was not competent to inquire into a matter involving the construction of treaties and other acts of State, is wholly untenable.

The learned Attorney General, who argued the case before their Lordships on behalf of the Appellant, conceded that he could not maintain the proposition that the Crown could sanction an invasion by its officers of the rights of private individuals whenever it was necessary in order to compel obedience to the provisions of a treaty. The proposition he contended for was a more limited

one. The power of making treaties of peace is, as he truly said, vested by our constitution in the Crown. He urged that there must of necessity also reside in the Crown the power of compelling its subjects to obey the provisions of a treaty arrived at for the purpose of putting an end to a state of war. He further contended that if this be so, the power must equally extend to the provisions of a treaty having for its object the preservation of peace, that an agreement which was arrived at to avert a war which was imminent was akin to a treaty of peace, and subject to the same constitutional law. Whether the power contended for does exist in the case of treaties of peace, and whether if so it exists equally in the case of treaties akin to a treaty of peace, or whether in both or either of these cases interference with private rights can be authorized otherwise than by the Legislature, are grave questions upon which their Lordships do not find it necessary to express an opinion. Their Lordships agree with the Court below in thinking that the allegations contained in the statement of defence do not bring the case within the limits of the proposition for which alone the Appellant's Counsel contended.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed with costs.
