

extra-territorial privileges; no court of justice of the neutral country can assume jurisdiction over her; the flag and commission of the belligerent Power are conclusive evidence of his title and right; no inquiry can be made, under such circumstances, into anything connected with her antecedent ownership, character, or history. Such was the decision (in accordance with well established principles of international law) of the highest judicial authority in the United States in 1811, in the case of the Exchange, a ship claimed by American citizens, in American waters, as their own property; but which, as she had come in as a public ship of war of France, under the commission of the first Emperor Napoleon, was held to be entitled to recognition as such in the waters of the United States, to the entire exclusion of every proceeding and inquiry whatever, which might tend in any way to deprive her of the benefit of that privileged character. The principles laid down in the following extracts from that judgment are in accordance with those which will be found in every authoritative work on international law which treats of the subject. (See the passages from Ortolan, Hautefeuille, Pando, &c., cited at length in the note to the British Counter-Case, pp. 14, 15; also Azuni, vol. ii (Paris edition, 1805), pp. 314, 315, &c.; and Bluntschli's "Droit International," Article 321, p. 184 of the French translation by Lardi.)

"The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all Sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers.

3. The case of the Exchange

"This consent may, in some instances, be tested by common usage and by common opinion growing out of that usage.

"A nation would justly be considered as *violating its faith*, although that faith might not be expressly plighted, which should suddenly, and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world.

"This full and absolute territorial jurisdiction being alike the attribute of every Sovereign, and being incapable of conferring extra-territorial power, would not seem to contemplate foreign Sovereigns nor their sovereign rights as its objects. One Sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express licence, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.

"This perfect equality and absolute independence of Sovereigns, and this common interest impelling them to mutual intercourse and an interchange of good offices with each other, have given rise to a class of cases in which every Sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction which has been stated to be the attribute of every nation.

"If, for reasons of State, the ports of a nation generally, or any particular ports, be closed against vessels of war generally, or the vessels of any particular nation, notice is usually given of such determination. If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all Powers with whom it is at peace, *and they are supposed to enter such ports, and to remain in them, while allowed to remain, under the protection of the Government of the place.*

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant-vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction and the Government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign Sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption.

"But in all respects different is the situation of a public armed ship. She constitutes a part of the military force of her nation; acts under the immediate and direct command of the Sovereign; is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign State. Such interference cannot take place without affecting his power and his dignity. The implied license, therefore, under which such vessel enters a friendly port, may reasonably be construed, and it seems to the Court ought to be construed, as containing an exemption from the jurisdiction of the Sovereign within whose territory she claims the rights of hospitality.

"Upon these principles, by the unanimous consent of nations, a foreigner is amenable to the laws of the place; but certainly, in practice, *nations have not yet asserted their jurisdiction over the public armed ships of a foreign Sovereign entering a port open for their reception.*"

The words of Bluntschli are:—

"Exceptionnellement on accorde l'exterritorialité aux navires de guerre étrangers, lorsqu'ils sont entrés dans les eaux d'un Etat avec la permission de ce dernier."

4. Other authorities.