TO
'ROBIE'
*
G.H.ROBINSON
A.B., LL.B., S.J.D.
*
FROM A PUPIL

F.L.WISWALL JR
Yorke Prizeman of the University of Cambridge
Proctor and Advocate in Admiralty

THE DEVELOPMENT OF ADMIRALTY JURISDICTION AND PRACTICE SINCE 1800

AN ENGLISH STUDY
WITH AMERICAN
COMPARISONS

CAMBRIDGE
AT THE UNIVERSITY PRESS
1970

Published by the Syndics of the Cambridge University Press
Bentley House, 200 Euston Road, London N.W.1
American Branch: 32 East 57th Street, New York, N.Y.10022

Library of Congress Catalogue Card Number: 77–108113

I. S. B. N.: 0 521 07751 6

Printed in Great Britain
at the University Press, Aberdeen

CONTENTS

Plate: Common Hall, Doctors' Commons, *facing page* xxviii
Preface and Acknowledgments vii
List of Admiralty Judges ix
Abbreviations and Symbols x
Table of Statutes xv
Table of Cases xviii

INTRODUCTION 1

1 THE ERA OF STOWELL 4

2 THE COURT RESURGENT 40

3 THE FALL OF DOCTORS' COMMONS 75

4 THE GREAT TRANSITION 96

5 THE COURT UNDER COMMON LAWYERS 116

6 THE EVOLUTION OF THE ACTION *in rem* 155

CONCLUSION 209

Bibliography 213
Index of Subjects 219
Index of Persons 222

PREFACE

WITH a few subsequent alterations and additions, this work is the Yorke Prize essay originally submitted in 1968, which was in turn largely derived from my doctoral dissertation of the previous year. It is published at the behest of the Faculty Board of Law of the University of Cambridge.

I wish to express my sincere appreciation to the following persons who have given me generous assistance in the procurement of books and materials for research:

W. A. F. P. Steiner, Esq., and the Staff of the Squire Law Library, Cambridge;

K. C. McGuffie, Esq., the Admiralty Registrar and P. V. Gray, Esq., the Admiralty Marshal, for the loan of books and materials from the Admiralty Registry, Royal Courts of Justice;

D. V. A. Sankey, Esq., Librarian and Keeper of the Records of the Honourable Society of the Middle Temple, for the loan of books from the Middle Temple Library;

C. L. Fisher, Esq., Librarian of the Bar, Probate and Supreme Court Libraries, for the loan of books from the Bar Library and storage rooms, Royal Courts of Justice;

The Rt Hon. Sir Jocelyn E. S. Simon, President of the Probate, Divorce and Admiralty Division of the High Court of Justice and B. H. Erhard, Esq., the President's Clerk, for the loan of books from the President's Room, Royal Courts of Justice;

The late K. H. Drake, Esq., Secretary of the Selden Society, for access to books in the Library of the Institute of Advanced Legal Studies, London;

The Hon. E. T. Gignoux, United States District Judge for Maine and the Maine Historical Society, for references and duplicated materials;

The Staff of the Library of the United States Court of Appeals for the Second Judicial Circuit, New York, for access to books and materials;

M. J. Prichard, Esq., of Gonville and Caius College, Cambridge and D. E. C. Yale, Esq., of Christ's College, Cambridge, for the loan of books and duplicated materials;

Lord McNair, Q.C., for the loan of a book; and

The Fellows of Doctors' Commons, who, though having long since departed this life, once assembled the great Library of the College of Advocates, many of the remnants of which have been of valued use to me.

I wish also to give my particular thanks to the following persons:

M. J. Prichard, Esq., for his guidance and generous assistance;
The Rt Hon. Lord Gardiner, Lord High Chancellor, K. C. McGuffie, Esq., Admiralty Registrar, and L. Bell, Esq., Assistant Keeper of the Public Record Office, for providing information cited in the body of this work;
Professor G. R. Elton, M. J. Prichard, Esq., Professor C. Parry, D. E. C. Yale, Esq., and K. C. McGuffie, Esq., for reading portions of the mss., and giving to me the benefit of their criticism;
The Editorial Staff of the Cambridge University Press, both in Cambridge and at the American Branch in New York;
Messrs. Burlingham Underwood Wright White & Lord, New York, for forbearance and for the use of various facilities;
Dr G. H. Robinson, Cromwell Professor-Emeritus of International and Admiralty Law of Cornell University and Dr C. Parry, Professor of International Law in the University of Cambridge, who were each partially responsible for my studies in Cambridge; and
My wife, Priscilla Gwyn Wiswall, for her encouragement over more than six years of research and for her invaluable assistance in translation, typing, proof-reading and in jacket design.

Castine, Maine F.L.W., JR.
June, 1970

ENGLISH ADMIRALTY JUDGES

When one is made admirall, hee must first ordaine and substitute for his lieutenant, deputies, and other officers under him, some of the most loyall, wise, and discreete persons in the maritime law and auncient customes of the seas which hee can any where find, to the end that by the helpe of God and their good and just government the office may be executed to the honour and good of the realme.

First Order of *The Black Book of the Admiralty*.

HIGH COURT OF ADMIRALTY

Sir William Scott, Lord Stowell	1798–1827
Sir Christopher Robinson	1828–33
Sir John Nicholl	1833–38
Dr Stephen Lushington	1838–67
Sir Robert Phillimore	1867–75

ADMIRALTY DIVISION HIGH COURT OF JUSTICE

Sir Robert Phillimore	1875–83
Sir James Hannen, P.	1875–91
Sir Charles Butt, J.	1883–92
Sir Francis Jeune, P.	1891–1905
Sir Gorell Barnes, Lord Gorell, P.	1892–1909
Sir Samuel Evans, P.	1910–18
Sir Maurice Hill, J.	1917–30
Sir Henry Duke, Lord Merrivale, P.	1919–33
Sir Boyd Merriman, Lord Merriman, P.	1934–62
Sir Gordon Willmer, J.	1945–58
Sir Bushby Hewson, J.	1958–66
Sir Jocelyn Simon, P.	1962–
Sir Henry Brandon, J.	1966–

[only judges named in the body of the work are listed]

ABBREVIATIONS

A	Answer
A.C.	Appeal Cases [Reports], 1891–
A.C.A.	Admiralty Court Act
A. & E.	Admiralty & Ecclesiastical Cases [Reports]
Adm.	Admiralty
A-G	Attorney-General
aff'd.	affirmed on appeal
A.J.	Associate Justice
Am. L. Rev.	*American Law Review*
Ap.	Appendix
[App.]	Appeal in Court of Appeal
App. Cas.	Appeal Cases [Reports], 1875–90
Asp.	Aspinall's Maritime Law Cases
B.	Baron [of the Exchequer]
B.D.I.L.	*British Digest of International Law*
Bos. & Pul.	Bosanquet & Puller's [C.P.] Reports
Br. & Lush.	Browning & Lushington's Reports
c.	chapter
c.	*contra* [versus], *circa*
C.B.	Common Bench [C.P.] Reports
C.C.	Circuit Court [U.S.]
C.C.R.	Crown Case Reserved
cert. den.	certiorari denied [U.S.]
C.J.	Chief Judge, Justice
C.J.S.	Civil Judicial Statistics
C.P.	Common Pleas
C. Rob.	Christopher Robinson's Reports
Can.	Canadian
Car. & K.	Carrington & Kirwan's [N.P.] Reports
cf.	see for comparison
Ch.	Chancery
ch.	chapter [U.S.]
Ch.D.	Chancery Division Reports
Cir.	Circuit [U.S.]
cit.	citation omitted
cl.	clause
Cmd.	Command
Co.	Coke's [K.B.] Reports
col.	column
Comm.	Commission, Committee
Cons.	Consolidation

contra	see for contrast
Ct(s).	Court(s)
D.	District [U.S.]
D.A.B.	*Dictionary of American Biography*
D.N.B.	*Dictionary of National Biography*
Dall.	Dallas' [U.S.] Reports
D.C.L.	Doctor of Civil Law (*Oxon.*)
Deb.	Debate
Div.	Division of the H.C.J. or of U.S. Judicial District
Doc.	Document
Dod.	Dodson's Reports
Doug.	Douglas' [K.B.] Reports
E.D.	Eastern District [U.S.]
E.R.	English Reports Reprint
Ecc.	Ecclesiastical
ed.	edition
Edw.	Edwards' Reports
Ex.D.	Exchequer Division Reports
F.	Federal Reporter [U.S.]
F.2d	Federal Reporter, Second Series [U.S.]
F.R.C.P.	Federal Rules of Civil Procedure [U.S.]
F. Supp.	Federal Supplement [U.S.]
Fed. Cas.	Federal Cases [U.S.] [Reports]
Godb.	Godbolt's [K.B.] Reports
H.C.	House of Commons
H.C.A.	High Court of Admiralty
H.C.J.	High Court of Justice
H.E.L.	*History of English Law* (Holdsworth)
H.L.	House of Lords
H.L. Cas.	House of Lords' Cases [Reports]
H.L.R.	*Harvard Law Review*
Hag.	Haggard's Reports
Hob.	Hobart's [K.B.] Reports
How.	Howard's [U.S.] Reports
[Inst.]	instance proceedings
intro.	introduction
J.	Judge, Justice
J. & H.	Johnson & Hemming's [Ch.] Reports
J.C.L. & I.L.	*Journal of Comparative Legislation*
Jur.	*The Jurist*
K.B.	King's Bench
K.B.D.	King's Bench Division Reports
K.C.	King's Counsel
Kn.	Knapp's [P.C.] Reports

La.	Louisiana
L.C.	Lord Chancellor
L.C.J.	Lord Chief Justice
L.Ed.	Lawyer's Edition [U.S.] Reports
L.J.	Lord Justice of Appeal
L.J.	*The Law Journal*
L.J. Adm.	*Law Journal Admiralty*
LL.D.	Doctor of [Civil and Canon] Laws (*Cantab.*)
Ll.L.	Lloyd's List & Shipping Gazette
Ll.L.R.	Lloyd's List Law Reports 1919–50
Ll. Rep.	Lloyd's List Law Reports 1951–
L.M.L.	*Law of Maritime Liens* (Price)
L. Mag.	*Law Magazine*
L. Mag. & Rev.	*Law Magazine & Review*
L.Q.R.	*Law Quarterly Review*
L.R.	Law Reports, Law Review
L. Rev.	*The Law Review*
L.T.	*Law Times*
L.T.R.	Law Times Reports
Leo.	Leonard's [K.B.] Reports
Lush.	Lushington's Reports
m.	membrane of the roll
M. & W.	Meeson & Welsby's [Exchequer] Reports
M.L.A.U.S.	The Maritime Law Association of the U.S.
M.R.	Master of the Rolls
M.S.A.	Merchant Shipping Act
M.S.R.	Merchant Shipping Rules
Mass.	Massachusetts
Md.	Maryland
Me.	Maine
Mich.	Michigan
Moo.	Moore's [P.C.] Reports
n.	note
N.E. 2d	North Eastern Reporter [U.S.] (2nd series)
N.P.	Nisi Prius
(n.s.)	new series
N.Y. 2d	New York Reports (2nd series)
N.Y.S. 2d	New York Supplement (2nd series)
Not. Cas.	Notes of Cases [Reports]
O(O).	Order(s) in R.S.C.
O.-in-C.	Order in Council
Ore.	Oregon
P.	President, Probate Division Reports [Admiralty] 1891–

P.C.	Privy Council
P.D.	Probate Division Reports [Admiralty] 1876–90
P.D.A.	Probate, Divorce, and Admiralty
P.R.O.	Public Record Office
Pa.	Pennsylvania
Parl.	Parliamentary
[Prohib.]	proceeding for writ of prohibition
Q.	Question
Q.B.	Queen's Bench
Q.B.D.	Queen's Bench Division Reports
Q.C.	Queen's Counsel
r(r).	rule(s)
R.C.	Royal Commission
R.I.	Rhode Island
R.S.C.	Rules of the Supreme Court
R.S.C.	Revised Statutes of Canada
Reg'r.	Registrar
Rett.	Rettie, Court of Session Cases [Reports]
Rev.	Revised, Revision
rev'd.	reversed on appeal
Ric.	Richard
Rt	Right
S.	South(ern) [U.S.] [also So.]
S.C.	South Carolina
S.C.J.	Supreme Court of Judicature
S.C.R.	Shipping Casualties Rules
S.C.R.	Short Cause Rules
S.D.	Southern District [U.S.]
S.G.S.	Shipping Gazette Supplement
S.I.	Statutory Instruments
S.R.O.	Statutory Rules & Orders
Sel. Pl. Adm.	*Select Pleas in Admiralty* (Marsden)
Sp.	Spinks' Reports
subs. proc.	subsequent proceedings
Sumn.	Sumner's Reports [U.S.]
Sup. Ct.	Supreme Court
Swab.	Swabey's Reports
T.L.R.	Times Law Reports
T.R.	Term [K.B.] Reports
'took silk'	made Q.C. or K.C.
U.S.	United States [Reports]
U.S.C.	United States Code
unrep.	unreported
v.	*versus*

W.B.	H.C.A. Warrant Book
W.D.	Western District [U.S.]
W.L.R.	Weekly Law Reports
W. Rob.	William Robinson's Reports
W.W.	*Who's Who*
W.W.W.	*Who Was Who*
Wall.	Wallace's [U.S.] Reports
Wheat.	Wheaton's [U.S.] Reports

SYMBOLS

§(§)	section(s)
¶(¶)	paragraph(s)
ˣ	unofficial short title

TABLE OF STATUTES

NOTE: statutes without official short titles have been assigned appropriate short titles by the author for convenience of citation. In the body of the work, these unofficial short titles are designated by the symbol 'ˣ', thus: Admiralty Jurisdiction Act, ˣ1389. In this table, statutes with no official short title are listed first by regnal year and chapter, and the substance is then noted in brackets, as in the first statute in the table below.

1389 – 13 Ric. 2, c. 5 [Admiralty Jurisdiction] : 4–6, 23, 29, 110–11
1391 – Admiralty Jurisdiction Act (15 Ric. 2, c. 3) : 4–6, 23, 27, 29
1400 – 2 Hen. 4, c. 11 [Admiralty Jurisdiction] : 5
1810 – 50 Geo. 3, c. 118 [Registrars of Admiralty and Prize Courts] : 50
1813 – 53 Geo. 3, c. 87 [Frauds by Boatmen, etc.] : 23, 26
1813 – 53 Geo. 3, c. 151 [Registrars of Admiralty and Prize Courts] : 50
1813 – 53 Geo. 3, c. 159 [Responsibility of Shipowners]: 22, 177, 179–80
1819 – 59 Geo. 3, c. 58 [Wages of Merchant Seamen] : 23
1821 – Cinque Ports Act (1 & 2 Geo. 4, c. 76) : 23, 99
1824 – Slave Trade Act (5 Geo. 4, c. 113) : 23
1825 – Act for the Registering of British Vessels (6 Geo. 4, c. 110) : 23
1832 – Privy Council Appeals Act (2 & 3 Wm. 4, c. 92) : 36
1833 – Judicial Committee Act (3 & 4 Wm. 4, c. 41) : 36, 98
1835 – 5 & 6 Wm. 4, c. 19 [Merchant Seamen] : 46
1840 – Admiralty Court Act (3 & 4 Vict. c. 65): 36, 41–2, 54, 57–8, 62, 67, 71, 80, 96, 141
1840 – 3 & 4 Vict. c. 66 [H.C.A. (Fees)] : 42, 48, 50, 52
1844 – 7 & 8 Vict. c. 112 [Merchant Seamen] : 46
1846 – 9 & 10 Vict. c. 62 [(Abolition of) Deodands] : 43
1846 – Fatal Accidents [Lord Campbell's] Act (9 & 10 Vict. c. 93) : 129–30
1846 – 9 & 10 Vict. c. 99 [Wreck and Salvage] : 43
1846 – 9 & 10 Vict. c. 100 [Steam Navigation] : 62
1847 – Harbours, Docks & Piers Clauses Act (10 & 11 Vict. c. 27) : 43
1850 – Piracy Act (13 & 14 Vict. c. 26) : 43
1854 – Admiralty Court Act (17 & 18 Vict. c. 78) : 53, 63–4, 83
1854 – Merchant Shipping Act (17 & 18 Vict. c. 104): 44, 61, 97, 120, 127
1854 – Merchant Shipping Repeal Act (17 & 18 Vict. c. 120) : 44
1857 – Court of Probate Act (20 & 21 Vict. c. 77) : 86–9, 92
1857 – Matrimonial Causes Act (20 & 21 Vict. c. 85) : 87, 89

1859 – 22 & 23 Vict. c. 6 [H.C.A. (Practise)] : 55, 90
1861 – Admiralty Court Act (24 & 25 Vict. c. 10) : 5, 58–60, 62, 64–5, 69–70, 80, 96, 104, 117, 126, 129–30, 133, 141, 168, 174, 181
1862 – Merchant Shipping Act Amendment Act (25 & 26 Vict. c. 63) : 61
1863 – Vice-Admiralty Courts Act (26 & 27 Vict. c. 24) : 61
1864 – Naval Agency & Distribution Act (27 & 28 Vict. c. 24) : 61
1864 – Naval Prize Act (27 & 28 Vict. c. 25) : 61
1866 – Naval Discipline Act (29 & 30 Vict. c. 109) : 61
1867 – Merchant Shipping Act (30 & 31 Vict. c. 124) : 97
1868 – County Courts Admiralty Jurisdiction Act (31 & 32 Vict. c. 71) : 98
1869 – County Courts Admiralty Jurisdiction Amendment Act (32 & 33 Vict. c. 51) : 98
1869 – Debtors Act (32 & 33 Vict. c. 62) : 99–100, 117, 128
1870 – Foreign Enlistment Act (33 & 34 Vict. c. 90) : 97
1873 – Supreme Court of Judicature Act (36 & 37 Vict. c. 66) : 102–3, 104–5, 141
1873 – Merchant Shipping Act (36 & 37 Vict. c. 85) : 97
1873 – Slave Trade (Consolidation) Act (36 & 37 Vict. c. 88) : 97
1874 – Supreme Court of Judicature (Commencement) Act (37 & 38 Vict. c. 83) : 103
1875 – Pacific Islanders' Protection Act (38 & 39 Vict. c. 51) : 110
1875 – Supreme Court of Judicature (Amendment) Act (38 & 39 Vict. c. 77) : 103–4, 106–8, 117, 127
1876 – Appellate Jurisdiction Act (39 & 40 Vict. c. 59) : 102, 105–6, 111
1876 – Merchant Shipping Act (39 & 40 Vict. c. 80) : 111
1878 – Territorial Waters Jurisdiction Act (41 & 42 Vict. c. 73) : 110
1879 – Civil Procedure Acts Repeal Act (42 & 43 Vict. c. 59) : 111
1879 – Shipping Casualties Investigations Act (42 & 43 Vict. c. 72) : 111
1882 – Merchant Shipping (Colonial Inquiries) Act (45 & 46 Vict. c. 76) : 111
1883 – Merchant Shipping (Fishing Boats) Act (46 & 47 Vict. c. 41) : 127–8
1883 – Bankruptcy Act (46 & 47 Vict. c. 52) : 128
1885 – Submarine Telegraph Act (48 & 49 Vict. c. 49) : 128
1885 – Evidence by Commission Act (48 & 49 Vict. c. 74) : 128
1888 – County Courts Act (51 & 52 Vict. c. 43) : 128
1889 – Merchant Shipping Act (52 & 53 Vict. c. 46) : 132
1890 – Colonial Courts of Admiralty Act (53 & 54 Vict. c. 27) : 128
1891 – Mail Ships Act (54 & 55 Vict. c. 31) : 128
1891 – Supreme Court of Judicature Act (54 & 55 Vict. c. 53) : 131

1894 – Supreme Court of Judicature (Procedure) Act (57 & 58 Vict. c. 16) : 132
1894 – Diseases of Animals Act (57 & 58 Vict. c. 57) : 132
1894 – Merchant Shipping Act (57 & 58 Vict. c. 60) : 132–3, 139, 143, 151
1905 – Shipowners' Negligence (Remedies) Act (5 Edw. 7, c. 10) : 184
1906 – Merchant Shipping Act (6 Edw. 7, c. 48) : 139
1911 – Merchant Shipping (Stevedores & Trimmers) Act (1 & 2 Geo. 5, c. 41) : 138
1911 – Maritime Conventions Act (1 & 2 Geo. 5, c. 57) : 137
1920 – Air Navigation Act (10 & 11 Geo. 5, c. 80) : 138
1920 – Administration of Justice Act (10 & 11 Geo. 5, c. 81) : 138, 140
1921 – Liverpool Corporation Act (11 & 12 Geo. 5, c. 79) : 98
1922 – Treaties of Washington Act (12 & 13 Geo. 5, c. 21) : 138
1925 – Merchant Shipping (International Labour Conventions) Act (15 & 16 Geo. 5, c. 42) : 138
1925 – Supreme Court of Judicature (Consolidation) Act (15 & 16 Geo. 5, c. 49) : 140–4, 149, 151–3
1928 – Administration of Justice Act (18 & 19 Geo. 5, c. 26) : 143
1947 – Crown Proceedings Act (10 & 11 Geo. 6, c. 44) : 149
1949 – Civil Aviation Act (12, 13 & 14 Geo. 6, c. 67) : 149
1956 – Administration of Justice Act (4 & 5 Eliz. 2, c. 46) : 149–53, 171, 203, 210–11
1964 – Defence (Transfer of Functions) Act (c. 15) : 153
1968 – Hovercraft Act (c. 59) : 154
1969 – Administration of Justice Act (c. 58) : 154

STATUTES OF THE UNITED STATES

U.S. Constitution, Article III, §2 : 27, 29, 93
1789 – (Judiciary) Act of September 24, c. 20 : 93
1790 – Act of July 20, c. 29 : 46
1842 – Act of August 23, c. 188 : 53
1845 – Act of February 26, c. 20 : 71
1847 – Act of March 3, c. 55 : 188
1899 – Act of March 3, c. 441 : 188
U.S. Code, Title 28, §2464 : 188
U.S. Code, Title 46, §606 : 24

STATUTES OF CANADA

1952 – The Admiralty Act (c. 1) : 193

TABLE OF CASES

Acrux, The, [1965] P. 391 : 167
Actæon, The, (1853) 1 Sp. 176; 164 E.R. 102 : 72
Agincourt, The, (1824) 1 Hag. Adm. 271; 166 E.R. 96 : 10, 24, 44
Agwisun, The (*in re. Atlantic Gulf & West Indies SS. Lines*), 20 F.2d 975 (S.D.N.Y. 1927) : 189
Aid, The, (1822) 1 Hag. Adm. 83; 166 E.R. 30 : 43
Alexander, The, (1811) 1 Dod. 278; 165 E.R. 1310 : 25, 184
Alexander, The, (1841) 1 W. Rob. 288; 166 E.R. 580 : 18, 62
Alexandria, The, (1872) L.R. 3 A. & E. 574 : 32, 98, 113
Aline, The, (1839) 1 W. Rob. 111; 166 E.R. 514 : 66, 176
Almizar, The, [1970] 1 Ll. Rep. 67 : 37
Altyre, The, (1885) S.G.S., 27 Feb., 150 : 127
Amalia, The, (1863) 1 Moo. P.C. (n.s.) 471; 15 E.R. 778 : 179
Annie Hay, The, [1968] P. 341 : 180
Apollo, The, (1824) 1 Hag. Adm. 306; 166 E.R. 109 : 11
Arantzazu Mendi, The, [1939] A.C. 256 : 184
Archer, H.M.S., [1919] P. 1 : 139
Aurania, The, and *Republic, The*, 29 F. 98 (S.D.N.Y. 1886) : 135

Bacon's (*Sir Thomas*) *Case*, (1588) 2 Leo. 103, 3 Leo. 192; 74 E.R. 394, 626 : 5
Banda & Kirwee Booty, The, (1866) L.R. 1 A. & E. 109; *subs. proc.* (1875) L.R. 4 A. & E. 436 : 62
Barbara, The, (1801) 4 C. Rob. 1; 165 E.R. 514 : 11, 58
Barons of the Cinque Ports v. Rokesle, et al., Coram Rege Roll, n. 93 (Trinity 1285), m. 1; 55 Selden Society 156 (1936) : 178
Beadell v. Manners (*The Victoria*), (1919) Ll. L. 14 July : 139
Beatrice, The, (1866) 36 *L.J. Adm.* 9 : 68
Bee, The, 3 Fed. Cas. 41 (No. 1219) (D. Me. 1836) : 33, 71, 94, 203
Beldis, The, [1936] P. 51 : 170–1
Belfast, The, 7 Wall. (74 U.S.) 624; 19 L.Ed. 266 (1868) : 177
Belgenland, The, 36 F. 504 (S.D.N.Y. 1888) : 57
Berkeley, The, 58 F. 920 (D. So. Car. 1893) : 204
Beta, The, (1869) L.R. 2 P.C. 447 : 129–30
Bold Buccleugh, The, (1850) 3 W. Rob. 220; 166 E.R. 944; *aff'd.* (1850–1) 7 Moo. P.C. 267; 13 E.R. 884 : 124, 155–62, 167, 200, 202
Bonita, The, (1861) Lush. 252; 167 E.R. 111 : 72
Bridgeman's Case, (1614) Hob. 11 (No. 23); 80 E.R. 162 : 6
British Aviator, The, [1965] 1 Ll. Rep. 271 : 138
Brown v. Burrows, 4 Fed. Cas. 360 (No. 1996) (C.C.S.D.N.Y. 1851) : 193

Brown v. Wilkinson, (1846) 15 M. & W. 391; 153 E.R. 902 : 173, 177
Bulgaria, The, [1964] 2 Ll. Rep. 524 : 148
Bure, The, (1850) 14 *Jur.* 1123 : 65, 184
Burns, The, [1907] P. 137 : 199–202

Calypso, The, (1828) 2 Hag. Adm. 209; 166 E.R. 221 : 9, 37
Cargo ex Port Victor, The, (1901) 84 L.T.R. 363; *aff'd.* [1901] P. 243 : 132, 169, 182
Caribe, The (*Pichirilo v. Guzman*), 290 F.2d 812 (1 Cir. 1961) : 204
Carlyle, The, (1858) 30 *L.T.* 278 : 63, 68
Castrique v. Imrie, (1870) L.R. 4 H.L. 414 : 190–1
Cayo Bonito, The, [1903] P. 203 : 125, 130, 159
Charkieh, The, (1873) L.R. 4 A. & E. 59 : 112–13
Christiansborg, The, (1884) 10 P.D. 141 : 194, 202
Citizen's Bank v. Nantucket Steamboat Company, 5 Fed. Cas. 719 (No. 2730) (C.C. Mass. 1841) : 172
City of Mecca, The, (1879) 5 P.D. 28; *rev'd.* (1881) 6 P.D. 106 : 191, 196, 202, 205
Clara, The, (1855) Swab. 1; 166 E.R. 986 : 12, 62, 166, 181
Clara Killam, The, (1870) L.R. 3 A. & E. 161 : 59, 97
Clarence, The, (1854) 1 Sp. 206; 164 E.R. 119 : 60, 73
Clarisse, The, (1856) Swab. 129; 166 E.R. 1056 : 37
Clinton v. The Brig Hannah, 5 Fed. Cas. 1056 (No. 2898) (Adm. Ct. Pa. 1781) : 27, 153, 163
Constable's (*Sir Henry*) *Case*, (1601) 5 Co. Rep. 106a; 77 E.R. 218 : 6, 8, 23
Constancia, The, (1846) 2 W. Rob. 487; 166 E.R. 839 : 60, 71, 94
Constitution, The, (1879) 4 P.D. 39 : 113
Cornelia Henrietta, The, (1866) L.R. 1 A. & E. 51 : 168
Courier, The, (1862) Lush. 541; 167 E.R. 244 : 68–9
Courtney, The, (1810) Edw. Adm. 239; 165 E.R. 1095 : 33–4, 67
Crimdon, The, (1918) 35 T.L.R. 81 : 148, 169
Currie v. M'Knight, (1896) 24 Rett. 1; [1897] A.C. 97 : 168, 200

DeLovio v. Boit, 7 Fed. Cas. 418 (No. 3776) (C.C. Mass. 1815) : 29–30, 124–5, 157
Diana, The, (1862) Lush. 539; 167 E.R. 243 : 62, 69
Dictator, The, [1892] P. 64, 304 : 131–2, 158–62, 165–6, 170–1, 174–8, 180–4, 187–8, 195, 198–201, 208
Draco, The, 7 Fed. Cas. 1032 (No. 4057) (C.C. Mass. 1835) : 29
Druid, The, (1842) 1 W. Rob. 391; 166 E.R. 619 : 70, 148
Drumlanrig, The, [1911] A.C. 16 : 103, 138
Duchesse De Brabant, The, (1857) Swab. 264; 166 E.R. 1129 : 173

Dundee, The, (1823) 1 Hag. Adm. 109, 166 E.R. 39; (1827) 2 Hag. Adm. 137 [*subs. proc.*], 166 E.R. 194 : 177–8, 183
Dupleix, The, [1912] P. 8 : 162, 182–3, 201, 207
Durst v. Masters, (1876) 1 P.D. 373 : 108

Elton, The, [1891] P. 265 : 131, 169
Emulous, The, 8 Fed. Cas. 697 (No. 4479) (C.C. Mass. 1813); *rev'd on other grounds*, 8 Cranch (12 U.S.) 110 : 29
Espanoleto, The, [1920] P. 223 : 192
Europa, The, (1861) Br. & Lush. 89 [cited pp. not in E.R.] : 72
Evangelistria, The, (1876) 2 P.D. 241 : 106

Fabius, The, (1800) 2 C. Rob. 245; 165 E.R. 304 : 11
Fagernes, The, [1927] P. 311 : 152
Fairisle, The (*Dean v. Waterman SS Co.*), 76 F. Supp. 27 (D. Md. 1947); *aff'd.* 171 F.2d 408 (4 Cir. 1948) : 183
Fanny M. Carvill, The, (1875) L.R. 4 A. & E. 417 : 123
Favourite, The, (1799) 2 C. Rob. 232; 165 E.R. 299 : 24
Fire Damer, Die, (1805) 5 C. Rob. 357; 165 E.R. 804 : 11, 24, 44
Fishman v. Sanders, 15 N.Y. 2d 298; 258 N.Y.S. 2d 380; 206 N.E. 2d 326 (1965) : 204
Flora, The, (1866) L.R. 1 A. & E. 45 : 180
Fortitude, The, (1843) 2 W. Rob. 217; 166 E.R. 736 : 42
Foster v. United States, 156 F. Supp. 421 (S.D.N.Y. 1957) : 210
Frances, The, (1820) 2 Dod. 420; 165 E.R. 1533 : 26–7
Franconia, The, (1877) 2 P.D. 163 : 129–30
Frederick, The, (1823) 1 Hag. Adm. 211; 166 E.R. 76 : 81
Freedom, The, (1871) L.R. 3 A. & E. 495 : 180
Fusilier, The, (1865) Br. & Lush. 341; 167 E.R. 391 : 32, 44, 131, 169

Game Cock Towing Co. v. Grey, (1887) [Q.B.D. unrep.] : 128
Gardner v. The New Jersey, 9 Fed. Cas. 1192 (No. 5233) (D. Pa. 1806) : 24
Gas Float Whitton (No. 2), The, [1896] P. 42; *aff'd.* [1897] A.C. 337 : 9, 124
Gemma, The, [1899] P. 285 : 170, 182–3, 199–201
General Iron Screw Collier Co. v. Schurmanns, (1860) 1 J. & H. 180; 70 E.R. 712 : 22, 60
General Pershing, The (*Criscuolo v. Atlas Imperial Diesel Engine Co.*), 84 F. 2d 273 (9 Cir. 1936) : 193, 205
Genesee Chief, The, v. Fitzhugh, 12 How. (53 U.S.) 443; 13 L.Ed. 1058 (1851) : 71
Girolamo, The, (1834) 3 Hag. Adm. 169; 166 E.R. 368 : 69
Glass v. The Sloop Betsey, 3 Dall. (3 U.S.) 6; 1 L.Ed. 485 (1794) : 28

Glatton, H.M.S., [1923] P. 215 : 142
Glider Standard Austria S.H. 1964, The, [1965] P. 463 : 152
Glory, The, (1849) 7 Not. Cas. 263; 13 *Jur.* 991 : 57
Golubchick, The, (1840) 1 W. Rob. 143; 166 E.R. 526 : 68, 71
Governor Raffles, The, (1815) 2 Dod. 14; 165 E.R. 1400 : 63
Graf A. Bernstorff, The, (1854) 2 Sp. 30; 164 E.R. 290 : 68
Gratitudine, The, (1801) 3 C. Rob. 240; 165 E.R. 450 : 24
Greenway & Barker's Case, (1613) Godb. 260; 78 E.R. 151 : 160, 162, 166, 170
Guldfaxe, The, (1868) L.R. 2 A. & E. 325 : 126, 129–30

Hannibal, The, (1867) L.R. 2 A. & E. 53 : 113
Hanson v. Denckla, 357 U.S. 235; 2 L.Ed. 2d 1283 (1958) : 197
Harmonie, The, (1841) 1 W. Rob. 179; 166 E.R. 540 : 11, 184
Harriet, The, (1841) 1 W. Rob. 182; 166 E.R. 541 : 72
Harrogate, The, 112 F. 1019 (2 Cir. 1901); *cert. den.* 184 U.S. 698, 46 L.Ed. 764 : 205–6,
Hay v. Brig Bloomer, 11 Fed. Cas. 893 (No. 6255) (D. Mass. 1859) : 68
Heinrich Björn, The, (1885) 10 P.D. 44 : 151, 170
Henry Coxon, The, (1878) 3 P.D. 156 : 113
Henry Reed, The, (1858) 32 L.T.R. 166 : 67–8
Hercules, The, (1819) 2 Dod. 353; 165 E.R. 1511 : 9, 185
Hero, The, (1865) Br. & Lush. 447; 167 E.R. 436 : 180
Holder Borden, The, 12 Fed. Cas. 331 (No. 6600) (D. Mass. 1847) : 9
Hoop, The, (1801) 4 C. Rob. 145; 165 E.R. 566 : 47–8, 184
Hope, The, (1840) 1 W. Rob. 154; 166 E.R. 531 : 172–3, 175, 181–2

Ida, The, (1860) Lush. 6; 167 E.R. 3 : 68–9
Ida, The, (1886) 11 P.D. 37 : 143
Independent Towing Company, In re., 242 F. Supp. 950 (E.D. La. 1965) : 31
Internatio-Rotterdam v. Thomsen, 218 F. 2d 514 (4 Cir. 1955) : 205
Ironsides, The, (1862) Lush. 458; 167 E.R. 205 : 69
Isis, The, (1883) 8 P.D. 227 : 120

Jack Park, The, (1802) 4 C. Rob. 308; 165 E.R. 622 : 19, 22
Jane & Matilda, The, (1823) 1 Hag. Adm. 187; 166 E.R. 67 : 16, 24, 34
Jarlinn, The, [1965] 1 W.L.R. 1098 : 13, 47, 184
Jay Gould, The, 19 F. 765 (E.D. Mich. 1884) : 18
Jennings v. Carson, 4 Cranch (8 U.S.) 2; 2 L.Ed. 531 (1807) : 8, 193
Joannis Vatis (No. 2), The, [1922] P. 213 : 183, 201
Johannes, The, (1860) Lush. 182; 167 E.R. 87 : 60, 69
Johann Friederich, The, (1839) 1 W. Rob. 35; 166 E.R. 487 : 157

John, The, (1801) 3 C. Rob. 288; 165 E.R. 466 : 24
John Dunn, The, (1840) 1 W. Rob. 159; 166 E.R. 532 : 70, 174, 194–5
John and Humphrey, The, (1624) H.C.A. 38/15/43 : 186
John and Mary, The, (1859) Swab. 471; 166 E.R. 1221 : 66
Jonge Bastiaan, The, (1804) 5 C. Rob. 322; 165 E.R. 791 : 181–3
Judith M., The, [1968] 2 Ll. Rep. 474 : 55
Juliana, The, (1822) 2 Dod. 504; 165 E.R. 1560 : 25
Jupiter (No. 2), The, [1925] P. 69 : 143

Kalamazoo, The, (1851) 15 *Jur.* 885 : 173, 180–2
Kernan v. American Dredging Co., 355 U.S. 426, 2 L.Ed. 2d 382 (1958) : 123
King, The, v. The Archbishop of Canterbury, (1807) 8 East 213; 103 E.R. 323 : 76

La Jeune Eugenie, 26 Fed. Cas. 832 (No. 15551) (C.C. Mass. 1822) : 34
Lambros Seaplane Base v. The Batory, 215 F.2d 228 (2 Cir. 1954) : 138
Lane v. Townsend, 14 Fed. Cas. 1087 (No. 8054) (D. Me. 1835) : 31, 188
LeCaux v. Eden, (1781) 2 Doug. 594; 99 E.R. 375 : 7, 62
Leda, The, (1863) Br. & Lush. 19; 167 E.R. 278 : 70
Leon XIII, The, (1883) 8 P.D. 121 : 113
Leucade, The, (1855) 2 Sp. 228; 164 E.R. 403 : 182
Liverpool &c. Nav. Co. v. Brooklyn Terminal, 251 U.S. 48; 64 L.Ed. 130 (1919) : 178
Logue Stevedoring Corp. v. The Dalzellance, 198 F.2d 369 (2 Cir. 1952) : 183
Longford, The, (1889) 14 P.D. 34 : 198–9, 201–2
Lord Warden of Cinque Ports v. the King in his Office of Admiralty &c., (1831) 2 Hag. Adm. 438; 166 E.R. 304 : 7, 8, 37, 80
Lowther Castle, The, (1825) 1 Hag. Adm. 384; 166 E.R. 137 : 25, 45, 73

McAllister v. United States, 348 U.S. 19; 99 L.Ed. 20 (1954) : 37
Macgregor Laird, The, (1866) L.R. 1 A. & E. 307 : 65
Magellan Pirates, The, (1853) 1 Sp. 81; 164 E.R. 47 : 43, 70
Majfrid, The, (1943) 77 Ll.L.R. 127 : 202
Malvina, The, (1862) 6 L.T.R. 369; 31 L.J. Adm. 113 : 59, 126
Manchester Corporation v. Manchester Palace of Varieties, Ltd., [1955] P. 133 : 212
Mauro v. Almeida, 10 Wheat. (23 U.S.) 473; 6 L.Ed. 369 (1825) : 17, 164–5
Mansoor The, [1968] 2 Ll. Rep. 218 : 206
Margaret, The, (1834) 3 Hag. Adm. 238; 166 E.R. 394 : 161, 172, 174
Margaret Mitchell, The, (1858) Swab. 382; 166 E.R. 1174 : 72

Marianna, The, (1835) 3 Hag. Adm. 206; 166 E.R. 382 : 9
Maria Theresa, The, (1813) 1 Dod. 303; 165 E.R. 1319 : 34
Medina, The, (1876) 2 P.D. 5 : 113
Meg Merrilies, The, (1837) 3 Hag. Adm. 346; 166 E.R. 434 : 63–4, 167
Mellona, The, (1846) 10 *Jur.* 992 : 57, 70, 174
Milan, The, (1861) Lush. 388; 167 E.R. 167 : 102
Milford, The, (1858) Swab. 362; 166 E.R. 1167 : 33, 67
Miller v. United States, 11 Wall. (78 U.S.) 268; 20 L.Ed. 135 (1870) : 17
Minerva, The, (1825) 1 Hag. Adm. 347; 166 E.R. 123 : 35
Minnetonka, The, 146 F. 509 (2 Cir. 1906) : 183
Mitchell v. Trawler Racer, Inc., 362 U.S. 539; 4 L.Ed. 2d 941 (1960) : 53
Monica S., The, [1968] P. 741; [1967] 2 Ll. Rep. 113 : 149, 153, 162, 169, 191, 203, 207–8
Monte A., The, 12 F. 332 (S.D.N.Y. 1882) : 175–6, 199
Montrosa, The, [1917] P. 1 : 98, 127
Mosher v. Tate, 182 F.2d 475 (9 Cir. 1950) : 183

Nautik, The, [1895] P. 121 : 126, 190–2
Nautilus, The, [1927] A.C. 145 : 106
Nelson, The, (1823) 1 Hag. Adm. 169; 166 E.R. 61 : 25
Neptune, The, (1834) 3 Hag. Adm. 129, 166 E.R. 354; *rev'd.* (1835) 3 Kn. P.C. 94, 12 E.R. 584 : 33, 38, 58, 151
Nereid, The, (1889) 14 P.D. 78 : 124
Nestor, The, 18 Fed. Cas. 9 (No. 10126) (C.C. Me. 1831) : 30, 124, 157, 163
New England, The, 47 F.2d 332 (S.D.N.Y. 1931) : 193
Newman v. Walters, (1804) 3 Bos. & Pul. 612; 127 E.R. 330 : 72
Newport, The, 15 F.2d 342 (9 Cir. 1926) : 18
Nightwatch, The, (1862) Lush. 542; 167 E.R. 244 : 70
Nina, The, (1867) L.R. 2 P.C. 38 : 68
Noel v. Isbrandtsen Company, 287 F.2d 783 (4 Cir. 1961) : 163
Northumbria, The, (1869) L.R. 3 A. & E. 24 : 104
Norwich Company v. Wright, 13 Wall. (80 U.S.) 104; 20 L. Ed. 585 (1871) : 31
Notarian v. Trans-World Airlines, 244 F. Supp. 874 (W.D. Pa. 1965) : 152
Nyland, The, 164 F. Supp. 741 (D. Md. 1958) : 73

Oriental, The, (1851) 7 Moo. P.C. 398; 13 E.R. 934 : 142
Orpheus, The, 15 Fed. Cas. 492 (No. 8330) (D. Mass. 1858) : 204

Palmyra, The, 12 Wheat. (25 U.S.) 1; 6 L.Ed. 531 (1827) : 189, 204
Parlement Belge, The, (1880) 5 P.D. 197 : 148

Partenreederei Wallschiff v. The Pioneer, 120 F. Supp. 525 (E.D. Mich., So. Div. 1954) : 202
Pauline, The, (1845) 2 W. Rob. 358; 166 E.R. 790 : 39
Peerless, The, (1860) Lush. 30, 167 E.R. 16; *aff'd.* (1860) 13 Moo. P.C. 484, 15 E.R. 182 : 69
Peggy, The, (1802) 4 C. Rob. 304; 165 E.R. 620 : 194
Penhallow v. Doane's Administrators, 3 Dall. (3 U.S.) 54; 1 L.Ed. 507 (1795) : 31, 205
Perth, The, (1838) 3 Hag. Adm. 414; 166 E.R. 458 : 39
Petone, The, [1917] P. 198 : 169
Place v. Potts, (1855) 5 H.L. Cas. 383; 10 E.R. 948 : 52, 60
Plymouth, The, 3 Wall. (70 U.S.) 20; 18 L.Ed. 125 (1866) : 125
Point Breeze, The, [1928] P. 135 : 167, 180, 194
Polydore v. Prince, 19 Fed. Cas. 950 (No. 11257) (D. Me. 1837) : 16, 32
Portsea, The, (1827) 2 Hag. Adm. 84; 166 E.R. 175 : 11, 25
Pratt v. Thomas, 19 Fed. Cas. 1262 (No. 11377) (D. Me. 1837) : 19
Price v. Sea Insurance Co., (1889) [P.D. unrep.] : 129
Prins Bernhard, The, [1963] 2 Ll. Rep. 236; 3 W.L.R. 1043 : 192
Prins Frederick, The, (1820) 2 Dod. 451; 165 E.R. 1543 : 113
Providence, The, 293 F. 595 (D. R.I. 1923) : 193
Public Opinion, The, (1832) 2 Hag. Adm. 398; 166 E.R. 289 : 5
Putbus, The, [1969] P. 136; *rev'd.* [1969] P. 144 : 171

Queen Mary, The, (1947) 80 Ll.L.R. 178 : 147
Queen of The South, The, [1968] 1 Ll. Rep. 182 : 47

R. v. Anderson, (1868) L.R. 1 C.C.R. 161 : 97
R. v. Forty-Nine Casks of Brandy, (1836) 3 Hag. Adm. 257; 166 E.R. 401 : 38–9
R. v. Judge of City of London Court, [1892] 1 Q.B. 273 : 124–5
R. v. Keyn, (1876) 2 Ex. D. 63 : 32, 124
R. v. Serva (The Felicidade), (1845) 2 Car. & K. 54; 175 E.R. 22 : 79, 94
R. v. Two Casks of Tallow, (1837) 3 Hag. Adm. 294; 166 E.R. 414 : 39
R. D. Wood Company v. Phoenix Steel Corporation, 327 F.2d 921 (3 Cir. 1964) : 65
Ramsay v. Allegre, 12 Wheat. (25 U.S.) 611; 6 L.Ed. 746 (1827) : 25, 31, 59
Raymes c. Osborne, (1579) 2 *Sel. Pl. Adm.* 156 : 125, 210
Rebecca, The, 20 Fed. Cas 373 (No. 11619) (D. Me. 1831) : 30–1, 178–9
Reed v. The Yaka, 307 F.2d 203 (3 Cir. 1962); *rev'd. on other grounds*, 373 U.S. 410 (1963) : 194
Reina Victoria, The, 299 F. 323 (S.D.N.Y. 1924) : 196
Rendsburg, The, (1805) 6 C. Rob. 142; 165 E.R. 880 : 26, 47–8
Resolute, The 168 U.S. 437 (1897) : 193
Reward, The, (1818) 2 Dod. 265; 165 E.R. 1482 : 27

Ring, The, [1931] P. 58 : 187
Ripon City, The, [1897] P. 226 : 148
Robert Pow, The, (1863) Br. & Lush. 99; 167 E.R. 313 : 70, 130
Robinsons, The, and *Satellite, The*, (1884) 5 Asp. 338 : 58
Rosina, The, (1921) 6 Ll.L.R. 346 : 148
Rounds v. Cloverport Foundry & Machine Co., 237 U.S. 303; 59 L.Ed. 966 (1915) : 206–7
Royal Arch, The, (1857) Swab. 269; 166 E.R. 1131 : 71, 98
Royal Star, The, [1928] P. 48 : 143
Ruby Queen, The, (1861) Lush. 266; 167 E.R. 119 : 70, 148
Ruckers, The, (1801) 4 C. Rob. 73; 165 E.R. 539 : 10, 70, 130

St. Elefterio, The, [1957] P. 179 : 152
St. George, The, [1926] P. 217 : 142
St. Merriel, The, [1963] 1 Ll. Rep. 63 : 149
St. Olaf, The, (1869) L.R. 2 A. & E. 360 : 33, 156
St. Olaf, The, (1877) 2 P.D. 113 : 113
Saracen, The, (1847) 2 W. Rob. 451; 166 E.R. 826 : 167
Saxonia, The, and *Eclipse, The*, (1862) Lush. 410; 167 E.R. 179 : 65
Schroeder, Gebrüder & Co. v. Myers & Co., (1886) [P.D. unrep.] : 41
Scotia, The, 35 F. 907 (S.D.N.Y. 1888) : 168
Seistan, The, [1959] 2 Ll. Rep. 607 : 133, 143
Selina Stanford, The, (1908) Ll.L., 16 Nov.; *The Times*, 17 Nov. : 184
Seraglio, The, (1885) 10 P.D. 120 : 184
Sheaf Brook, The, [1926] P. 61 : 142–3,
Silver Bullion, [Ten Bars of], (1854) 2 Sp. 70; 164 E.R. 312 : 44
Siren, The, 7 Wall. (74 U.S.) 152 (1868) : 169
Slave, Grace, The, (1827) 2 Hag. Adm. 94; 166 E.R. 179 : 34
Smart v. Wolff, (1789) 3 T.R. 323; 100 E.R. 600 : 7
Smith v. Brown, (1871) L.R. 6 Q.B. 729 : 105, 129–30
Solis, The, (1885) 10 P.D. 62 : 121
Stainbank v. Fenning, (1851) 11 C.B. 51; 138 E.R. 389 : 161, 211
Steele v. Thacher, 22 Fed. Cas. 1204 (No. 13348) (D. Me. 1825) : 31
Suevic, The, [1908] P. 292 : 132
Swan, The, (1870) L.R. 3 A. & E. 314 : 98
Syracuse, The, 23 Fed. Cas. 594 (No. 13718) (C.C.S.D.N.Y. 1868) : 57

Taber v. Jenny, 23 Fed. Cas. 605 (No. 13720) (D. Mass. 1856) : 71
Temiscouata, The, (1855) 2 Sp. 208; 164 E.R. 392 : 70, 174
Tervaete, The, [1922] P. 259 : 148, 169
Thales, The, 23 Fed. Cas. 884 (No. 13856) (C.C.S.D.N.Y. 1872) : 194
Thekla, The, 266 U.S. 328; 69 L.Ed. 313 (1924) : 169
Theta, The, [1894] P. 280 : 126, 130
Thomas Allen, The, (1886) 12 App. Cas. 118 : 128

Thyssen Steel Corp. v. Federal Commerce & Nav. Co., Ltd., 274 F. Supp. 18 (S.D.N.Y. 1967) : 197
Ticonderoga, The, (1857) Swab. 215; 166 E.R. 1103 : 148
Tiger, The, (1622) H.C.A. 38/14/51 : 186
Tolten, The, [1946] P. 135 : 59, 168, 198
Transfer No. 7, The, 176 F. 2d 950 (2 Cir. 1949) : 206
Trelawney, The, (1801) 3 C. Rob. 216*n*.; 165 E.R. 441*n*. : 34, 63, 167, 185
Trident, The, (1839) 1 W. Rob. 29; 166 E.R. 484 : 72
Trinity House, ex parte, (1624) H.C.A. 38/15/22 : 186
Triune, The, (1834) 3 Hag. Adm. 114; 166 E.R. 348 : 39, 171–2, 175, 180–1
Troubador, The, (1878) [P.D. unrep.] : 196
Tubantia, The, [1924] P. 78 : 72, 139
Tucker v. Alexandroff, 183 U.S. 424; 46 L.Ed. 264 (1901) : 163
Two Ellens, The, (1872) L.R. 4 P.C. 161 : 167
Two Friends, The, (1799) 1 C. Rob. 271; 165 E.R. 174 : 33

Ulrik Holm, The, 298 F. 849 (1 Cir. 1924) : 204
United States v. Peters, 3 Dall. (3 U.S.) 121; 1 L.Ed. 535 (1795) : 28, 163

Vera Cruz (No. 1), The, (1884) 9 P.D. 88; *rev'd.* 9 P.D. 96 : 117, 123, 130
Vera Cruz (No. 2), The, (1884) 9 P.D. 96 : 130, 137
Veritas, The, [1901] P. 304 : 168
Victor, The, (1860) Lush. 72; 167 E.R. 38 : 170
Victoria, The, (1858) Swab. 408; 166 E.R. 1188 : 72
Ville de St. Nazaire, The, 124 F. 1008 (D. Ore. 1903) : 162
Vivar, The, (1876) 2 P.D. 29 : 106, 147
Vladimir, The, (1874) [H.C.A. unrep.] : 80, 110
Volant, The, (1842) 1 Not. Cas. 503; 1 W. Rob. 383; 166 E.R. 616 : 33, 156, 172–3, 175, 180–2, 200
Vrede, The, (1861) Lush. 323; 167 E.R. 143 : 72

Walter D. Wallet, The, [1893] P. 202 : 184
Warrior, The, (1818) 2 Dod. 288; 165 E.R. 1490 : 43
Wasp, The, (1867) L.R. 1 A. & E. 367 : 169
Western Maid, The, 257 U.S. 419; 66 L.Ed. 299 (1921) : 169, 212
Whilelmine, The, (1842) 1 W. Rob. 335; 166 E.R. 598 : 81
Wild Ranger, The, (1863) Br. & Lush. 84; 167 E.R. 310 : 175, 194
William [Moakes's] Money, (1827) 2 Hag. Adm. 136; 166 E.R. 193 : 45, 167
Wyllie v. Mott & French, (1827) 1 Hag. Ecc. 28; 162 E.R. 495 : 38

Yeaton v. United States, 5 Cranch (9 U.S.) 281; 3 L.Ed. 101 (1809) : 37

Zephyr, The, (1827) 2 Hag. Adm. 43; 166 E.R. 160 : 16
Zephyr, The, (1864) 11 L.T.R. 351; 2 Asp. 352 : 65, 181
Zephyrus, The, (1842) 1 W. Rob. 329; 166 E.R. 596 : 43
Zeta, The, (1875) L.R. 4 A. & E. 460 : 119
Zeta, The (Mersey Docks & Harbour Board v. Turner), [1892] P. 285; [1893] A.C. 468 : 70, 126, 130

Practice Direction (Arresting 'Sister' Ship : Pleadings) (No. 2), [1969] 1 W.L.R. 613; [1969] 1 Ll.Rep. 483 : 171
Practice Statement (Judicial Precedent), [1966] 1 W.L.R. 1234 : 208

It will be no wonder if all courts of justice should, on some future day, in their turns be revolutionized:— but it will be some satisfaction and a curiosity at least, that the traces of their existence remain; and which, like the monumental inscriptions of the illustrious dead, may serve as examples to show WHO *were once useful to mankind.*

SIR JAMES MARRIOTT, LL.D.

Formulare Instrumentorum, 1802

intro., p.vi

Opposite: Court sitting in the Common Hall of Doctors' Commons – lithograph by Rowlandson taken from Ackermann's *Microcosm of London*, 1808, vol. I, facing p. 224.

INTRODUCTION

THE object of this work, as the title indicates, is to convey the writer's impressions of the development of Admiralty jurisdiction and practice during the last and the present century. The natural vehicle for such study is the Admiralty Court itself, because it is and was so obviously the focal point for change; tracing the history of the Court during the period covered by this work is therefore the most convenient method of observing the development of jurisdiction and practice, and, in the last chapter of the work, a remarkable change in the jurisprudence and substantive Law of Admiralty brought about as a result of alterations in the structure, composition and practice of the Admiralty Court.

It is, however, important to realize at the outset that this work is not precisely a history of the Admiralty Court as an institution; it is to avoid this impression that the work bears a title which emphasizes Admiralty jurisdiction and practice rather than the Court itself. Thus consideration is given not only to jurisdiction and practice, but to procedure, jurisprudence, peripheral influences upon development, and the more important personalities associated with the Court and its practice. And because the work is not properly a history of the Court *per se*, I am obliged to omit mention of personalities such as Pilcher, Langton, Bateson, and Karminski, JJ., who have served the Court during the present century but have not been directly involved in developments of jurisdiction and practice noted in this work, and to include mention of such personalities as Lord Esher, M.R., Sir John Jervis, C.J., and Sir Gainsford Bruce, J., who, though not actually Admiralty Judges, nonetheless had a profound influence upon the development of Admiralty jurisdiction and practice.

As one who went to sea before he went to law, and whose affection for and fascination with Admiralty is born of a love of the sea and ships, I am mindful of the wisdom of a statement made over a century ago:

> The Jurisdiction of the High Court of Admiralty, resting, as it now does, upon a basis so firmly established by our statute law, and independent of that authority which it has derived from ancient custom, renders

any inquiry respecting its origin a subject more fit for the research of the antiquarian than for that of the lawyer.[1]

A mariner and lawyer but not an historian, I have endeavoured to avoid pronouncing upon those phases of the subject which I know to lie outside the sphere of my own competence and within that of the trained historian. Moreover, consideration is restricted to the Admiralty jurisdiction itself, and does not include the jurisdiction of the Court in such matters as prize and maritime crime, which are worthy of detailed study by those more knowledgeable and interested in them than I—'the Prize Court', said Lord Mansfield, 'is peculiar to itself; it is no more like to the Admiralty than to any [common law] Court in Westminster Hall'.[2] What will be the concern of this work is the Court's civil, or 'instance' jurisdiction —so called because suits therein are brought at the instance of a plaintiff[3]—not merely because 'the Instance (at least in these times of peace) deserves more consideration than the Prize Court',[4] but because within the instance jurisdiction is contained the jurisprudence of Admiralty, in which I enjoy a particular interest.

The chronological period covered by this work has been chosen for several reasons; because it was in the nineteenth century that the Admiralty jurisdiction, which had been for so long restricted by statute, began to be restored and broadened by counteracting statutes; because the period covered has seen the development of most of the jurisdiction and substantive and procedural Law of Admiralty which prevails in the present day; and because the Admiralty Law of the United States, in which I have had my professional training and experience, and with which there are many fascinating and useful comparisons to be drawn, underwent its greatest development during the same period.

As the development of English Admiralty has had such a great influence upon that of American Admiralty, with a consequent interest by American textwriters in the history of English Admiralty jurisdiction,[5] and because the reverse of these propositions is true to a somewhat lesser degree,[6] reference is made to developments in American Admiralty, where useful, to illustrate parallels with or divergencies from the development of English Admiralty, or to show some direct relationship.

[1] Edwards, p. 1.
[2] See *id.*, p. 224.
[3] See Conkling, p. 354, n. (*a*).
[4] Edwards, p. 31.
[5] See, *e.g.*, Conkling, pp. 35–51.
[6] See, *e.g.*, Roscoe, *Practice*, intro., p. 2, n. (*c*).

In the period of Admiralty history prior to the nineteenth century, I must acknowledge a general inexpertise and lack of training in historical research, which original study of that period requires; consequently, when it is necessary to give a general picture or establish a particular fact of that period (particularly in the first chapter), reference will be made to such sources as R. G. Marsden's 'Six Centuries of the Admiralty Court' or the Introduction to the fifth edition of E. S. Roscoe's *Admiralty Jurisdiction and Practice* —not because they are themselves the most original or authoritative works upon the subject, but because (for the sake of convenience) they encapsulate, with references, brief and usually reliable pictures of that period prior to and outside the scope of this work.

It must be made absolutely clear that this work views the development of English jurisdiction and practice through the eyes of an American Proctor and Advocate; I have made a conscious effort to avoid the pitfall of chauvinism, but it may be that the reader will judge this an unsuccessful attempt.

While two of the three lawyers from whom I have drawn my greatest enthusiasm for The Law are understandably my father and the great teacher to whom this book is dedicated, the third is Sir W. S. Gilbert. The reader is at least fairly warned.

Finally, I must confess a degree of nostalgia for the relatively halcyon days of the Admiralty Court under the civilians, and in this I may also deserve the judgment passed upon one of the old proctors who lingered about the Court after the fall of Doctors' Commons: that he 'was steeped in Admiralty lore, and the main object of his life appeared to be to preserve the old Admiralty practice against the attacks of the Common Law. For this purpose he had always some precedent or point which he pressed on counsel, hoping to keep the court in the ancient ways'.[1]

For these failings, if such they be, I tender apology in advance.

[1] Roscoe, *H.C.A.*, pp. 12–13.

CHAPTER I

THE ERA OF STOWELL

IN ORDER to appreciate the position of the Admiralty Court at the time when Lord Stowell came to the bench, it is first advisable to make a brief foray into the Court's previous history.

As the name suggests, the High Court of Admiralty was in fact an instrument of the office of Lord High Admiral. The Crown having made a delegation of the Royal Prerogative in maritime affairs to the Admiral, the Court came into existence to deal with offences and disputes within the Admiral's jurisdiction. The Judge of the Court was traditionally styled 'Deputy' or 'Lieutenant' of the Lord High Admiral, and originally even held his appointment by letters patent from the Admiral rather than from the Crown,[1] though by Stowell's time the reverse was true.[2]

For reasons which ranged from petty jealousy to righteous indignation at real encroachment upon their jurisdiction, the courts of common law very soon became resentful of the power exercised by the civil law Court of Admiralty; as early as the year 1296, the authority of the Admiral to adjudicate disputes involving seizure at sea was denied by the Common Pleas,[3] and in the later decades of the fourteenth century the steady acquisition of Admiralty jurisdiction[4] became intolerable to the common lawyers. Their remedy was to obtain statutory restriction of the Admiral's jurisdiction to 'a thing done upon the sea'.[5] Later, to plug backwaters through which the civilians had since sailed, all matters, including 'contracts, pleas, and quarrels', which arose within the body of a county whether on land or water, were explicitly removed from the jurisdiction of the 'Admiral's Court' and declared triable only at common law.[6] This latter statute also contained a provision excluding the Admiralty from cognizance of 'wreck'—included, it is said, as a result of greedy infighting between the barons and the Lord High Admiral over claims to and confiscation of shipwrecks.[7]

[1] Marsden, 'Six Centuries', p. 86.
[2] A. Browne, vol. 2, p. 28.
[3] Marsden, *Select Pleas*, vol. 1, intro., p. xvii.
[4] See *id.*, pp. xlv–xlix.
[5] Admiralty Jurisdiction Act, 1391.
[6] Admiralty Jurisdiction Act, 1389.
[7] Hall, intro., pp. xii–xiv.

These statutes—13 Ric. 2, c. 5 and 15 Ric. 2, c. 3—were still in force during the second quarter of the nineteenth century, restricting even then the exercise of Admiralty jurisdiction.[1] For triple certainty, yet another enactment—2 Hen. 4, c. 11—was secured by the common lawyers, aimed not at the Court but at 'wrongful' suitors, levying a fine of ten pounds upon and making double damages recoverable from one who instituted in Admiralty a cause not within its jurisdiction, both fine and damages to be determined in an action at common law by the 'injured' defendant in Admiralty.[2] Though this statute remained in force until 1861,[3] no exercise of it is apparent in the nineteenth century.

If these Acts of Parliament put a stop to the jurisdictional encroachments of Admiralty upon the preserve of the common law, they did not, evidently, satisfy the appetite of the common lawyers for the Admiralty jurisdiction itself. Various devices, consisting chiefly of legal fictions, were employed in the common law courts to enable them to adjudicate maritime matters actually within the Admiralty jurisdiction; but when retaliation in kind was attempted by the civilians in the Admiralty Court, they were thwarted by common law writs of prohibition.[4] A plea was made to Elizabeth I to intervene against these depredations, but the result was unsuccessful; a similar plea to James I unfortunately not only failed, but so enraged were the common lawyers at the attempt [and most particularly Sir Edward Coke, then Lord Chief Justice of the Common Pleas (see the attack upon the Admiralty Court in his *Fourth Institute*)], that the frequency of prohibition was actually increased.[5]

That the civilians were driven in desperation to seek the aid of the Crown is understandable, if one considers the provocation which they had endured. Surely there could have been no more legitimate concern to the Admiral and his Court than the validity of the patents issued by him to Vice-Admirals of the counties; yet, in *Sir Thomas Bacon's Case*,[6] the High Court of Admiralty having issued an order to show cause why the patents of the Vice-Admirals of Norfolk and Suffolk ought not to be revoked following the death of the Lord High Admiral, Coke—even in 1588 a

[1] *The Public Opinion*, (1832) 2 Hag. Adm. 398.
[2] Admiralty Jurisdiction Act, 1400.
[3] Repealed: Admiralty Court Act, 1861, §31.
[4] Roscoe, *Practice*, intro., p. 7.
[5] *Id.*, pp. 10–11.
[6] (1588) 2 Leo. 103, 3 Leo. 192.

foe of the Admiralty jurisdiction—moved for and received a prohibition in the King's Bench upon grounds that the cause was properly determinable only at common law. Later, in *Sir Henry Constable's Case*,[1] the King's Bench was able to act even more effectively, judicially defining 'wreck' under the Act of 1391 as that cast at ebb tide upon the shelf below the flood mark, thereby removing all such cases from the Admiralty jurisdiction into that of the common law, though the Admiral had always theretofore exercised jurisdiction below the high-water mark; this case, together with other restrictive decisions of the common law courts, laid the foundation of modern Admiralty jurisdiction, which even today is more limited in some respects than it was prior to its pillage by the common lawyers.

It ought to be noted that, though Coke may properly be classed as the chief antagonist of the Admiralty jurisdiction, the side of the common law was well represented both before and after his time by other men of great ability and dedication to victory in a struggle which, at times, took on some of the aspects of a holy war. One of the most telling common law decisions was that of Hobart, C.J., in *Bridgeman's Case*,[2] which went far beyond the language of the statutes of Richard II in holding that contracts made at sea must be sued upon at common law if the debts thereby created were to be paid on land. In the eighteenth century this rationale was supported by Blackstone, and extended by him to restrict to the cognizance of Admiralty only those contracts both made and executed at sea.[3]

In 1632, at the urging of Attorney-General Noy, articles were drawn by Charles I and his council which restored a portion of the Admiralty jurisdiction; though these articles were ratified and subscribed by all the common law judges, however, they did not seem to avail.[4] During the Commonwealth, an ordinance was passed which defined and considerably broadened the Admiralty jurisdiction, but it was declared invalid at the Restoration and an attempt to persuade Parliament to re-enact the provisions was unsuccessful in spite of a determined civilian effort.[5]

Not surprisingly, the Admiralty Court fell into a decline following these rebuffs, and the civilians retreated into a state of semi-

[1] (1601) 5 Co. Rep. 106a.
[2] (1614) Hob. 11 [No. 23].
[3] A. Browne, vol. 2, p. 75.
[4] Roscoe, *Practice*, intro., pp. 11–12.
[5] *Id.*, pp. 13–14.

isolation which avoided open conflict with the common law. An occasional prohibition issued to the Court, but for the most part the civilians seemed content to allow the common law judges to set the boundaries of Admiralty jurisdiction,[1] though even the latter became critical, in time, of the oppressive behaviour of their predecessors.[2] It should not, however, be supposed that the civilians either forgot or forgave the attacks of the common lawyers; indeed, it was often necessary even in the nineteenth century to settle jurisdictional questions in the Admiralty Court by considering at length that phase of the historical development of the Admiralty jurisdiction.[3] 'Outnumbered and outgunned', it was wiser by far for the civilians to bide time, awaiting a more favourable climate in which to press the reforms which they desired.

When Stowell became Admiralty Judge, the instance jurisdiction of Admiralty was still restricted to its narrowest scope, and the instance Court was practically dormant. The naval wars were providing the Court with a considerable volume of prize adjudication, but the civil business occupied the Judge only for an hour or so, once or twice a week.[4] Nevertheless, it is important to note in some detail what, in fact, the instance jurisdiction was at the beginning of the nineteenth century, before noting the jurisdictional developments during Stowell's tenure as Judge.

Fortunately, a magnificent work on the Law of Admiralty, comprehending both jurisdiction and procedure, was published in 1802. The author, Arthur Browne, LL.D., was Professor of Civil Law in the University of Dublin; but his treatise was dedicated to Stowell and based upon the law and practice of the English Admiralty Court. Of course, as a civilian, Browne did not hesitate to refute the transgressors of the rightful jurisdiction of Admiralty at every opportunity. His arguments, however, are sound ones, and he freely ceded points to the common lawyers when he felt that their position was justified, even concerning interpretation of the statutes of Richard II.[5] Browne's work had an immense impact upon Admiralty, wherever practised; not only was it relied upon in the English Admiralty Court, but, scarcely five years after its publication, was also specifically cited

[1] See *LeCaux v. Eden*, (1781) 2 Doug. 594.
[2] See Buller, J., *Smart v. Wolff* (1789) 3 T.R. 323, 348.
[3] See, *e.g.*, *Lord Warden of Cinque Ports v. The King in his Office of Admiralty*, (1831) 2 Hag. Adm. 438.
[4] Marsden, 'Six Centuries', p. 174.
[5] A. Browne, vol. 2, p. 92.

as standard authority by Chief Justice John Marshall in an Admiralty appeal before the Supreme Court of the United States.[1] Indeed, Browne was so well received in America that a U.S. edition of his work was published in New York in 1840, and this edition was, in turn, relied upon by later American Admiralty textwriters.[2]

The instance jurisdiction at the dawn of the nineteenth century is summarized by Browne as: contract—for wages or hypothecation; tort—for assault, collision and spoil; and quasi-contract—for salvage and in actions by part-owners for security.[3] But Browne admits that the limits of the jurisdiction were confused,[4] and he goes into considerably greater detail on specific points. In fact, Browne did not include several points of instance jurisdiction at all, perhaps because they were in that day such commonplace matters that they were not considered important enough to dwell upon. With the aid of other sources, however, a reasonably complete jurisdictional picture may be drawn as follows:

DROITS: civil droits were the Admiral's *perquisites* [property rights] in wreck at sea.[5] 'Wreck', in this sense, included *jetsam* [shipwreck, and/or cargo and deck gear jettisoned to lighten a vessel *in extremis* and so prevent her from foundering]—whether found as *flotsam* [floating on the surface] or as *lagon* [sunken, but buoyed for retrieval],[6] *derelicts* [abandoned vessels],[7] and *deodands* [objects instrumental to death aboard ship, or goods and belongings found upon a corpse floating at sea or cast ashore].[8] Pirate goods and spoils were also droits of Admiralty after the pirate's conviction,[9] and certain kinds of 'Royal Fish' [sturgeon, grampuses, porpoises, and *sea-waifs* (stranded whales)] were perquisites of the Admiral.[10] Any droits could be claimed by the owner within a year and a day of finding, but he was liable for salvage.[11] In the case of wreck on shore, found and sold (except for deodands), the owner's sole remedy lay at common law;[12] but where wreck was

[1] *Jennings v. Carson*, 4 Cranch (8 U.S.) 2 (1807).
[2] Conkling, p. 376, n. (*a*).
[3] A. Browne, vol. 2, pp. 121–2.
[4] *Id.*, p. 71.
[5] *Id.*, pp. 45–7.
[6] See *id.*, p. 50.
[7] *Id.*, p. 51.
[8] *Id.*, p. 56.
[9] *Id.*, p. 54.
[10] See *Lord Warden of Cinque Ports v. The King in his Office of Admiralty*, (1831) 2 Hag. Adm. 438.
[11] A. Browne, vol. 2, p. 51.
[12] A. Browne, vol. 2, p. 51; see also *id.*, p. 49. *Sir Henry Constable's Case*, (1601) 5 Co. Rep. 106a.

retrieved from the water and carried away, remedy was by suit in Admiralty.[1] In the event that no owner appeared, the wreck was sold by order of the Court and the finder awarded salvage out of the proceeds, the remainder being perquisites of Admiralty.[2] The apportionment of salvage, whether or not an owner appeared, was therefore the primary occupation of the Admiralty Court under the category of droits.[3] Pirate goods were something of a special matter, in that the owner could claim them only if they were brought to England,[4] but the Court had power both to condemn pirate goods as droits[5] and to decree their restoration.[6]

SALVAGE: civil salvage (as distinct from prize salvage) is part of the ancient 'inherent' jurisdiction of Admiralty.[7] Salvage could be earned (at that time) simply for towing a distressed vessel,[8] or for endeavour so heroic that it is unrivalled in fiction.[9] It is awarded at the suit of the salvor, in an amount proportional to the degree of service and the value of the property salved.[10]

CONTRACT: the Admiralty jurisdiction comprehended only unsealed contracts made upon the sea for a maritime consideration.[11] A partial exception was also made for contracts made abroad incident to a matter originating at sea.[12] The principal test was therefore locality, but even so the contract would not be cognizable in Admiralty unless the subject matter was maritime on its face.[13]

HYPOTHECATION: questions of hypothecation were brought before the Court upon the suit of a bondholder who supplied necessaries [provisions, stores, tackle, etc.] or loaned money for the voyage, usually to the ship's master, on the credit of the ship rather than that of the owner.[14] If the form of hypothecation was a *bottomry* bond, it pledged the ship's bottom (usually the

[1] A. Browne, vol. 2, p. 51.
[2] *Id.*, p. 52.
[3] *Id.*, p. 53.
[4] *Id.*, p. 54.
[5] *The Marianna*, (1835) 3 Hag. Adm. 206.
[6] *The Hercules*, (1819) 2 Dod. 353.
[7] *The Calypso*, (1828) 2 Hag. Adm. 209; see also *The Gas Float Whitton (No. 2)*, [1896] P. 42, at pp. 47–53.
[8] See *infra*, p. 41.
[9] See *The Holder Borden*, 12 Fed. Cas. 331 (No. 6600) (D. Mass. 1847).
[10] See *The Calypso*, (1828) 2 Hag. Adm. 209, 217–18.
[11] A. Browne, vol. 2, p. 72.
[12] *Id.*, p. 84.
[13] *Id.*, pp. 75, 81, 88, 90, 91, 94.
[14] Robinson, §49, p. 370.

keel) as security.[1] The ship could not be hypothecated in her home port before commencing a voyage,[2] nor could Admiralty take jurisdiction of claims for necessaries supplied to foreign ships in English ports unless there was an express hypothecation.[3] But Admiralty always retained jurisdiction over hypothecation of English ships in foreign ports.[4] It ought to be noted that suit upon hypothecation could only be brought *in rem* [against the *res*, or thing hypothecated: the ship], a right unique to Admiralty, and that there could be no suit *in personam* [against the master or owners] as there was no personal liability upon any bond of hypothecation.[5]

FREIGHT: in the case of cargo brought to England, the master had a lien upon the cargo in his possession for payment of *freight* [charges for carriage by sea], and this lien was enforceable in Admiralty.[6]

WAGES: seamen had a right to sue in Admiralty for wages earned on a voyage, and they had a lien upon the ship for payment, which might be enforced by an action *in rem*.[7] But the master of a ship, though his contract of employment might satisfy the requirements for Admiralty jurisdiction, could not sue for his wages in Admiralty because his contract was held to rely upon the credit of the owner rather than upon the credit of the ship.[8]

TORT: in general, the Admiralty jurisdiction comprehended all torts at sea.[9] Actions for assault and personal injury were very common in the instance Court,[10] and suit could be instituted by either passengers[11] or crew.[12] Damage to property at sea, including collision, was also within the Admiralty jurisdiction,[13] though in cases of cargo spoil and damage, common law evidently had concurrent jurisdiction with Admiralty.[14]

POSSESSION AND RESTRAINT: in cases of wrongful possession of a ship, Admiralty had an equitable power to decree restitution; but there was no Admiralty jurisdiction if possession was

[1] Robinson, §49, p. 370. [2] A. Browne, vol. 2, p. 80. [3] *Ibid.*
[4] *Id.*, p. 84. [5] *Id.*, p. 99. [6] *Id.*, p. 82.
[7] See Holt, p. 44; on 'special contract' for wages, see *infra*, pp. 25–6.
[8] A. Browne, vol. 2, pp. 95, 104; Maxwell, p. 8.
[9] A. Browne, vol. 2, p. 110 [torts often called 'damage'].
[10] *Ibid.* [11] *The Ruckers*, (1801) 4 C. Rob. 73.
[12] See, *e.g.*, *The Agincourt*, (1824) 1 Hag. Adm. 271.
[13] See A. Browne, vol. 2, pp. 110–11. [14] *Id.*, p. 116.

taken within the body of a county.[1] The Court had no jurisdiction to try legal title or order sale of the ship upon application by part-owners, and so could not entertain petitory suits.[2] Part-owners could, however, bring suit in Admiralty to restrain their ship from commencing a voyage to which they did not agree, pending the deposit of a bond for safe return with the Court by the majority owners.[3]

MISCELLANEOUS: in addition to its instance jurisdiction, the Admiralty Court had power to revoke English privateers' letters of marque when ancillary to decision of civil questions involving privateers,[4] power to punish for contempt,[5] power to execute judgments of foreign Admiralty courts—including imprisonment impervious to *habeas corpus*,[6] and jurisdiction to hear cases on appeal from Vice-Admiralty courts.[7] It is also well to note one of the more serious jurisdictional defects—Admiralty had no cognizance of ship mortgages made ashore,[8] and did not exercise jurisdiction over those made at sea.[9] But as to some of the jurisdiction claimed by the common law, Browne says that if suit should be brought in Admiralty on a charter-party, for freight in general average, or to determine title to a ship, and a prohibition not issue to the Admiralty Court, 'I do not see how the [C]ourt could refuse to entertain it . . .'[10]

As to the exercise of the instance jurisdiction in that day, it is said that it was practically limited to the settlement of petty disputes between shipowners,[11] and the determination of such fundamental questions as whether Jersey was a 'foreign possession' for the purpose of sustaining a bottomry bond.[12]

From the jurisdiction of the High Court of Admiralty, it is well to turn to an outline of the practice in the Court at the time of Stowell's judgeship. In doing so, assistance is chiefly by two

[1] A. Browne, vol. 2, p. 117.
[2] *Id.*, pp. 114–15; Holt, pp. 204–5; *contra*, Parsons, p. 236. See also Betts, p. 16.
[3] See, *e.g.*, *The Apollo*, (1824) 1 Hag. Adm. 306.
[4] See *Die Fire Damer*, (1805) 5 C. Rob. 357, 360.
[5] See *The Harmonie*, (1841) 1 W. Rob. 179.
[6] A. Browne, vol. 2, p. 120. [7] *The Fabius*, (1800) 2 C. Rob. 245.
[8] A. Browne, vol. 2, p. 95. [9] See *The Portsea*, (1827) 2 Hag. Adm. 84.
[10] A. Browne, vol. 2, pp. 121–2. [11] Holt, p. 206.
[12] So held in *The Barbara*, (1801) 4 C. Rob. 1.

works—Browne, and a collection of instruments then used in the Court which was also published in 1802, compiled by Sir James Marriott, Master of Trinity Hall, Cambridge, and Stowell's predecessor as Admiralty Judge.

It is interesting to note that, like Browne, Marriott exerted a great—and even more enduring—influence upon American Admiralty Law. The author of the first published collection of Admiralty forms in the United States candidly admits drawing it from Marriott,[1] as do later American textwriters;[2] and there can be little doubt that the striking similarity between many modern forms in England and the United States is directly traceable to Marriott's work.

In considering the procedure of the early nineteenth century, reference will be made to the location in Marriott's collection of some of the more important forms of instruments.

Proceedings in Admiralty are divisible into two categories: those *in rem*, and those *in personam*. By the time of Stowell's judgeship, actions *in rem* under the instance jurisdiction of the Court had become far more common than actions *in personam*;[3] the former, therefore, will be examined first.

The proceeding *in rem* was most frequently employed in suits for seamen's wages, on hypothecation, of possession, and in collision;[4] doubtless it was often used as well in cases of salvage and droits.

The first step in the proceeding *in rem* was for the plaintiff's proctor to secure an entry in the 'action book' kept in the Admiralty Registry, stating the name of the plaintiff, and giving a description of the ship to be sued and the amount of the claim.[5] Then the plaintiff executed an affidavit of the cause of action,[6] later to become known as the 'affidavit to lead warrant'[7] (this procedure was instituted in 1801, to curtail the frequency of vexatious arrests[8]), whereupon a warrant issued to the Admiralty Marshal from the Registry, directing him to arrest the ship and/or cargo, and citing the ship's master, and others having any interest in the vessel [the owners], to appear and defend upon a named day.[9] By 1800 the

[1] Conkling, intro., p. v, n. (*a*).
[2] See, *e.g.*, Dunlap, intro., p. viii.
[3] A. Browne, vol. 2, pp. 396, 397; and *cf.* Clerke, p. 3. See also *The Clara*, (1855) Swab. 1, 3.
[4] A. Browne, vol. 2, pp. 396–7.
[5] A. Browne, vol. 2, p. 397; Coote, 1st ed., pp. 10, 20.
[6] A. Browne, vol, 2, p. 397.
[7] Coote, 1st ed., p. 241.
[8] A. Browne, vol. 2, p. 402, n. (7).
[9] *Id.*, pp. 397–8; Marriott, p. 326.

warrant, and other process of the High Court of Admiralty, issued in the name of the King rather than that of the Lord High Admiral.[1]

The warrant was next served upon the vessel by the Marshal in the time-honoured manner of exhibiting the original and holding it to the mainmast, then nailing a copy in its place;[2] it is also a very ancient practice to chalk a fouled anchor, symbolic of the jurisdiction of the Admiralty Court, on some prominent space topsides in addition to the service of the warrant.[3] The Marshal then executed a certificate of service (commonly called the 'Marshal's return'), which was filed in the Registry together with the original warrant.[4]

The owner(s), in due course, either appeared or defaulted. Assuming the latter case, the persons cited in the warrant were publicly called to appear, three times on each of four successive court days, each non-appearance incurring a formal default. The plaintiff's proctor then filed a 'summary petition', praying possession of the *res*; the ship's defenders again having been called three times without appearing, the Judge admitted the petition on pronouncing contempt, and issued a 'first decree' giving the plaintiff possession.[5] Conditional upon securing the first decree, the plaintiff gave bail in the form of two sureties, in double the amount of the claim, to answer any 'latent demands' [claims of intervenors] which might arise within a year's time; unless this bail was given, the plaintiff had to wait for a year and a day before taking possession of the *res*.[6] Unfortunately for the plaintiff, the 'possession' thus secured gave no right of sale, and so it became necessary for his proctor to file an allegation of the ship's 'perishable condition', praying the issue of a commission to the Marshal to appraise and sell the ship and bring the proceeds into the Registry, upon which fiction the Court would, as a matter of course, decree a 'perishable monition' ordering all interested parties to appear and show cause why the ship should be be sold at auction.[7] The cause was then assigned for summary hearing, a commission of appraisement and sale decreed, the *res* sold, and

[1] Hall, p. 9.
[2] A. Browne, vol. 2, p. 398.
[3] See, *e.g.*, *The Jarlinn*, [1965] 1 W.L.R. 1098, 1100.
[4] A. Browne, vol. 2, p. 398.
[5] *Id.*, pp. 398–402.
[6] *Id.*, p. 402; Coote, 1st ed., pp. 97, 111.
[7] A. Browne, vol. 2, pp. 403–4; Marriott, p. 340.

the proceeds brought into the Registry and distributed in satisfaction of the claim or claims, according to their priorities, any balance being decreed to the shipowner(s), saving latent demands.[1] Remarkably, any interested party might appear and defend at any time until a year after the first decree.[2]

If an interested party obeyed the warrant's citation, he might enter an appearance 'under protest' [a *special* appearance] in order to contest the Court's jurisdiction, or he might appear 'absolutely' [a *general* appearance]. In the former case, the protest might be overruled and the appearance made absolute, should the Court hold for jurisdiction.[3] Upon absolute appearance, the 'impugnant' [defendant] gave a 'fidejussory caution' [bail of sureties] which stipulated his personal liability for any judgment and undertook to appear when necessary in person.[4] Presumably, this bail had the effect of releasing the ship from arrest.[5] The 'promovent' [plaintiff] was then called upon to file his 'libel' [complaint], with a bond of sureties, by the next court day—failing which the action would be dismissed. Both parties were then required to give further security in the form of 'cautions', which could equal double the sum in which their respective sureties were bound; but if the parties were unable to find sureties, then either or both of them, at the discretion of the Judge, might be permitted to give a 'juratory caution' [personal recognizance on oath].[6] The plaintiff having filed his libel, the defendant then filed his answer, which might be a general concession, a general denial, or formal exceptions to particular articles of the libel; the exceptions might be 'peremptory' [calling for summary judgment on the pleadings] or 'dilatory' [objecting to the form of the libel]. The plaintiff might then file a 'replication' [rebutter], to which the defendant might reply with a 'duplication' [surrebutter].[7] Either party might demand of the other that he answer each of the pleadings on oath, which was then required on pain of personal attachment.[8] Should the pleadings present the issues satisfactorily to both parties, the cause might then be assigned for hearing; but if the pleadings together with the personal answers of the adversaries were not satisfactory to both, the cause then proceeded upon 'plea

[1] A. Browne, vol. 2, pp. 404–5.
[2] *Id.*, p. 405.
[3] *Id.*, pp. 406–7.
[4] *Id.*, pp. 407–10.
[5] *Id.*, p. 409, n. *October 9th*; Marriott, p. 355.
[6] *Id.*, pp. 410–11; *id.*, p. 354.
[7] *Id.*, pp. 414–15.
[8] *Id.*, pp. 416–17.

and proof'. In the latter case the pleadings were first filed, and a 'term probatory' was granted to both parties, during which they might produce witnesses to prove or contradict allegations in the pleadings; a 'term probatory' was equivalent to one court day, and three were granted as a matter of form; in practice, however, continuances were easily obtained.[1]

Witnesses not appearing voluntarily could be served with a 'compulsory' process [subpoena] in person,[2] a citation *viis et modis* [by substituted service], or failing those, a warrant for 'personal apprehension'.[3] Once appearing, the witnesses were sworn,[4] whereupon they underwent a secret examination (in the normal course of the civil law) before an examiner commissioned by the Court, which resulted in a deposition signed by the individual witness and affirmed by him afterwards in open court before the Judge.[5] Either party might administer written interrogatories, via the examiner, to their adversaries' witnesses.[6] If any witnesses were incapable of appearing in London, they might be examined elsewhere by commission of the Court. The examiner so appointed was usually both an officer of the Court and a notary public; the parties' proctors were also required to be present at such an examination.[7] When either party had done examining witnesses, his proctor might move publication of the depositions; upon publication, exceptions and objections to the testimony might be offered, and, if necessary, corroborating or impeaching witnesses might then be called as before, new probatory terms having been granted for the purpose.[8] There was then a last opportunity for the introduction of documentary evidence, following which the cause was assigned for hearing.[9]

In 'trifling suits' the entire procedure just described might be dispensed with, the witnesses undergoing only a *viva voce* examination at the hearing.[10]

Upon a hearing, in open court before the Judge, the evidence was read and arguments heard by the parties' advocates; the Judge then assigned the cause for sentence, and issued a citation

[1] A. Browne, vol. 2, pp. 418–19; see also Coote, 1st ed., pp. 39–40.
[2] A. Browne, vol. 2, p. 419; Marriott, p. 344.
[3] *Ibid.*
[4] *Ibid.*; Marriott, p. 308.
[5] *Id.*, p. 421 [the office of Examiner in Admiralty yet exists].
[6] *Ibid.*
[7] *Id.*, pp. 422–5.
[8] *Id.*, pp. 425–6.
[9] *Id.*, p. 427.
[10] *Id.*, p. 428.

to the party against whom the decision had gone, to appear to hear the sentence and to show cause, if possible, why the sentence should not be pronounced and executed.[1] Following sentence, the Judge assigned costs,[2] which were absolutely within his discretion.[3]

If a want of Admiralty jurisdiction was apparent on the face of the libel, the defendant might obtain a prohibition at common law (usually from the King's Bench), despite his failure to contest the jurisdiction of the Admiralty Court, even *after* the Court had pronounced sentence.[4] If the libel was good on its face but a cause for prohibition still existed, the defendant had to except to the Admiralty jurisdiction in his answer or be afterwards ineligible to apply for a prohibition;[5] yet, all else failing, the defendant might obtain an injunction in Chancery after sentence to prevent enforcement of the decree of execution.[6]

The proceeding *in personam*—though infrequently used—might be employed in suits upon wages, injury, possession of proceeds, and ransom bills, although in the first two cases the Court was also able to exercise its jurisdiction *in rem*.[7] The proceeding *in personam* basically differed but slightly from that *in rem*. The warrant, when issued, was of course drawn for arrest of the person, and was executed by the Marshal exhibiting the warrant and taking the defendant into custody; the defendant remained in custody until providing a fidejussory caution [bail] in the sum of five hundred pounds.[8] Upon appearance, the defendant was obliged to produce new sureties or else go to prison, unless admitted to a juratory caution [personal recognizance];[9] in practice, it was evidently customary to waive even the juratory caution for seamen and paupers, unless demanded by the adverse party.[10] Thereafter, the prodecure *in personam* paralleled that of a suit *in rem* in which the defendant appeared collaterally to defend the *res*.[11]

In the case of an unfound or absent defendant, the ancient and

[1] A. Browne, vol. 2, pp. 428–9.
[2] *Id.*, p. 429.
[3] See *The Zephyr*, (1827) 2 Hag. Adm. 43.
[4] A. Browne, vol. 2, pp. 441–2.
[5] *Id.*, p. 442.
[6] See *The Jane and Matilda*, (1823) 1 Hag. Adm. 187, 196 n.
[7] A. Browne, vol. 2, p. 397.
[8] *Id.*, pp. 432–3; Marriott, p. 330.
[9] *Id.*, pp. 433–4; *id.*, p. 354.
[10] See *Polydore v. Prince*, 19 Fed. Cas. 950 (No. 11257) (D. Me. 1837).
[11] A. Browne, vol. 2, p. 434.
Id., see pp. 406–29.

unique remedy of Admiralty attachment might have been applied to seize goods of the defendant within the jurisdiction and thus compel him to appear; but according to Browne, Admiralty attachment had fallen into disuse prior to the nineteenth century.[1] It has been suggested by textwriters in America, where Admiralty attachment had become an important feature of the proceeding *in personam*,[2] that its disuse in England resulted from the determination of the courts of common law, enforced by prohibition, to restrict the Admiralty Court to the exercise of jurisdiction *in rem*.[3]

It is important to note that, although Admiralty attachment superficially resembles the process of foreign attachment as employed by the City of London Court, it is neither based upon nor identical thereto.[4] The chief distinction between the two is that Admiralty attachment effects the seizure of property (chattels only; real property is not subject[5]) in the 'possession' of the defendant, while foreign attachment at common law effects the seizure of a defendant's property while in the possession of a third party.[6]

In addition to two-party litigation, there was a procedure for third-party intervention[7] and Browne even set out the procedure in petitory suits,[8] though admitting that the Admiralty Court did not decide questions of title.[9] When such detail abounds as to matters seldom, if ever, coming before the Court, it is curious indeed that Browne should omit all mention of at least two procedural points, particularly in discussing cases of collision, which were common features of the Admiralty practice of his day.

It has been the custom of the Admiralty Court since the sixteenth century, in cases of collision or salvage, for 'nautical assessors' to sit with the Judge at the hearing and later to give him the advantage of their technical expertise in maritime affairs, thus aiding his interpretation of the evidence. Most usually, these assessors are two Elder Brethren of the London Trinity House, an organization whose charter comprehended this function[10] in addition to the regulation of Thames pilotage, maintenance of navigational aids, and other duties. Though not attending in a

[1] A. Browne, vol. 2, pp. 434–5.
[2] Hall, p. 132; Conkling, pp. 478–85.
[3] See *Hall*, pp. 60–1.
[4] A. Browne, vol. 2, pp. 434–5; *cf.* Marriott, pp. 258, 350; *Manro v. Almeida*, 10 Wheat. (23 U.S.) 473, 490 (1825).
[5] *Miller v. United States*, 11 Wall. (78 U.S.) 268 (1870).
[6] See *infra*, p. 143.
[7] A. Browne, vol. 2, pp. 428–9.
[8] *Id.*, pp. 430–1.
[9] *Id.*, p. 430.
[10] See Roscoe, *Practice*, intro., p. 4 and n. (*k*).

majority of causes before the High Court of Admiralty, they had certainly become features of the Court before the nineteenth century. Interestingly, nautical assessors were once also used in American Admiralty courts, but in 1855 the practice was deemed improper by the Supreme Court, establishing the modern use of expert testimony instead.[1]

Another feature of the English Admiralty procedure which also had its American counterpart was the dual action. In some cases, the suit was entered both *in rem* against the vessel and *in personam* against her master;[2] a special form of warrant was served,[3] and bail for the ship released the master as well.[4] The dual action against ship and master died out during the nineteenth century, perhaps because masters became increasingly judgment-proof; but the practice continued for a time, particularly in cases of collision, of including the name of the master in parentheses following the name of the ship in the title of the cause given in the report; properly, the master's name should be omitted in the citation of such a case, but occasionally it was not, and cases such as *The Alexander*—(Larsen)[5] have since been cited quite incorrectly: *viz.*, '*The Alexander Larsen*'.[6]

An overall view of the Admiralty procedure of the early nineteenth century leaves one with mixed feelings. On one hand, a characterization of the proceedings as being analogous to arbitration (as opposed to actions at law or suits in equity) is probably fair, particularly in so-called 'trifling suits'.[7] On the other, both Browne[8] and his predecessor, Clerke,[9] take particular pains to impress upon the reader that the procedure in all causes in Admiralty was summary [informal] rather than plenary [formal]; not only, it has been observed, was this patently untrue[10] (save in the ecclesiastical sense of 'summary' procedure), but by modern standards the actual procedure was inefficient to say the very least. Moreover, the distinction between plenary and summary procedure was often productive of even further expense, delay,

[1] Parsons, vol. 2, pp. 438–9; however, assessors did sit in *The Jay Gould*, 19 F. 765 (E.D. Mich. 1884).
[2] *Id.*, p. 394; Conkling, p. 449; and see *The Newport*, 15 F. 2d 342 (9 Cir. 1926).
[3] Marriott, p. 328.
[4] Conkling, p. 449.
[5] (1841) 1 W. Rob. 288.
[6] See, *e.g.*, Williams and Bruce, 3rd ed., p. 191, n. (*n*).
[7] See Conkling, p. 565.
[8] Vol. 2, p. 413.
[9] See *Praxis*, Title 19.
[10] Conkling, p. 376, n. (*a*).

and confusion, because plenary [*e.g.*, personal injury] and summary [*e.g.*, wages] causes could not be joined in the same libel over the objection of the defence,[1] thereby necessitating two separate suits, often by plaintiffs who could least afford the expense and delay [*e.g.*, seamen].

As a brief examination of the Admiralty jurisdiction and procedure is necessary to an appreciation of the Court as an institution in any given period in its history, so almost equally important is at least a glimpse of the dominant personality of the Court, the Admiralty Judge.

Stowell's life was a wonderfully rich and fascinating one, which, in many respects, was not influential upon the Court and hence not within the scope of this work—but his biography is, in itself, very worthwhile reading.[2] Briefly, these are some notable points: he was born William Scott in 1745, in the County of Durham; he gained a scholarship to Corpus Christi, Oxford, and later became Camden Reader in Ancient History and a Fellow of University College; he was graduated D.C.L. in 1779 and became a Fellow of Doctors' Commons in the same year; he was called to the bar by the Middle Temple in 1780, but his practice remained in the civil law; he served as a Conservative M.P. from 1790 until 1821, latterly representing the University of Oxford, and was not considered an 'active' member of Parliament; he became Admiralty Advocate in 1782, Master of the Faculties in 1790, and Judge of the High Court of Admiralty in 1798; he was elevated to the peerage as Baron Stowell in 1821; he resigned the Admiralty Judgeship late in 1827, and died in 1836.[3] Socially, Stowell was a member of the highest intellectual circle of his day; he was a close personal friend of Dr Samuel Johnson, among others; Stowell's younger brother, John Scott, became Lord Eldon, the great Chancellor, and they were inseparable companions.[4] As a personality, Stowell was notorious not only for his brilliance, but for being 'parsimonious', and 'a great eater and a drinker of port';[5] indeed, Stowell's fondness for 'splicing the main brace' in good fellowship was so well known that it became the foundation for a social pun regarding his comportment.[6] Stowell's career as

[1] *Pratt v. Thomas*, 19 Fed. Cas. 1262 (No. 11377) (D. Me. 1837); see also Parsons, vol. 2, p. 375; also *The Jack Park*, (1802) 4 C. Rob. 308, 309 [Dr Swabey].
[2] See Roscoe, *Lord Stowell, etc.*
[3] Holdsworth, *H.E.L.*, vol. 13, pp. 668–9; *D.N.B.*
[4] *Ibid.*
[5] *Id.*, p. 675.
[6] *Id.*, p. 611, n. 1.

Admiralty Judge will be considered in due course, but, undeniably, it was his adjudication in Prize for which he remains best known, and his authorship of the modern Law of Prize which is his monument.[1]

It is said that when Lord Stowell became Admiralty Judge, the paucity of the Court's instance business was such 'that it could be said to afford that great legal luminary little else than an occasional morning's occupation.'[2] This scarcely means, however, that Stowell sat idle upon the bench, because the volume of Prize causes accruing to the Admiralty Court from the naval warfare in which Britain was at the time engaged gave the Judge more business than at any previous time in the Court's history. In 1798, the year in which Stowell came to the bench, the total number of causes tried in both Admiralty and Prize was 880; the following year's total was 1,470; and in the peak year of 1806 the number of causes totalled 2,286 and the Court sat for business for 115 court days—a quite heavy docket even by present-day standards.[3]

It was during Stowell's tenure as Judge that the Admiralty Court experienced the stirrings of renascence, which later grew to the statutory expansion of the instance jurisdiction. The reason regularly advanced for the Court's later growth is that Stowell's adjudications, particularly in Prize, raised the Court to a position of far greater importance than it had theretofore enjoyed.[4] This explanation seems so cogent upon its face, that it does not appear ever to have been questioned or even considered in any detail. Indeed, there can be no doubt whatever that the number of Prize causes and Stowell's Prize decisions both brought about a new public interest in the Court; but the Second Peace of Paris in 1815 ended all Prize adjudication until the outbreak of the Crimean War, and even before 1815 the total number of Admiralty and Prize causes had fallen below the number entertained during Stowell's first year as Judge, and the Court likewise sat for business for fewer days (880 causes and 54 court days in 1798; 813 causes and 51 court days in 1812).[5] Moreover, eighteen years were to elapse between the last of the Prize business and the first official

[1] See Roscoe, *Lord Stowell, etc.*
[2] Coote, 1st ed., preface, p. v.
[3] See 1833 Return to H.C. by Swabey, Deputy Admiralty Reg'r.
[4] See, *e.g.*, Roscoe, *Practice*, intro., p. 14.
[5] See 1833 Return to H.C. by Swabey, Deputy Admiralty Reg'r.

consideration of an expansion of the Admiralty jurisdiction by a Parliamentary Committee in 1833, and the number of instance causes before the Court actually declined during that period; in 1822 a total of 64 Admiralty causes came before the Court, which sat for business for 38 court days during that year; and in 1832, the year prior to the Committee's Report, the total number of Admiralty causes dwindled to 37, and the number of court days for business was only 28.[1] Clearly, it is fallacious to assert that the sole or even the principal reason for the recommendations of the 1833 Committee and the Court's later growth was an eminence enjoyed by the Court over twenty years previously, and largely in a jurisdiction unexercised since 1815.

There is no single reason for the Court's jurisdictional expansion after the time of Stowell, but there are at least a few factors which were contributory and which are also traceable to origin in the period of Stowell's judgeship:

(1) the rapid development of maritime commerce following the naval wars, and the beginning of the age of the steamship, both pointing to the need for a Court which could give really effective application to the maritime law;
(2) the increasing awareness of the advantages of a suit in Admiralty (*viz.*, choice of remedy *in rem* or *in personam*, equitable protection of interests, absence of jury, increasing use of truly summary procedure) as opposed to an action at common law;
(3) the willingness of the common law courts to permit Admiralty a greater jurisdictional latitude than it had enjoyed since prior to the time of Coke;
(4) the undoubted respect, both public and legal, which accrued to the Court from Lord Stowell's administration of the Laws of Admiralty and Prize;
(5) the friends of the Court in Parliament (*e.g.*: Lushington, Nicholl, Robinson, and Stowell himself), and the impetus given by the passage, from 1813 to 1825, of a number of Acts affecting the Court's jurisdiction, however slightly.

The first and last of the factors previously mentioned are those most easily proven and illustrated, if not also the most important.

[1] See 1833 Return to H.C. by Swabey, Deputy Admiralty Reg'r.

During the eighteenth century, the growth of maritime commerce and the protection of shipping during the naval wars, especially in the West Indian trade, produced a number of statutes giving jurisdiction to the Admiralty Court over matters such as wilful disobedience in convoy[1] and hiding mariners from Royal Navy press gangs,[2] though they made no substantial addition to the Court's business. There was, however, one statutory provision of immense significance for the future of both the Court and Law of Admiralty; it introduced, upon considerations of public policy, the principle of limitation of a shipowner's liability in cases of cargo loss—through negligence or by fire—to the value of the ship and freight.[3] This was followed, in 1813, by an Act[4] extending the principle to cover both loss and damage in causes of collision. In no case, however, was jurisdiction under these Acts given to the High Court of Admiralty; instead, Chancery was declared to have sole jurisdiction under the Acts[5] to award limitation to shipowners upon their claim, actions having been instituted against them for recovery of damages either at common law or in Admiralty.[6] It would seem probable that this jurisdiction was originally awarded to Chancery because of its ability to enjoin the prosecution of a multiplicity of suits in the other courts—a power most useful in implementing the limitation procedure, and a power which would never have been given to the Admiralty Court. That the Court of Chancery continued to be awarded jurisdiction in limitation Acts well into the latter half of the nineteenth century can probably be ascribed to the principle of 'legislative inertia', in which later statutes tend to follow an earlier established pattern. Nonetheless, limitation of liability came to have its effect, both direct and indirect, upon the Admiralty Court.[7]

In 1813 a period began during which a succession of statutory enactments conferred miscellaneous bits of jurisdiction upon the Admiralty Court. That year saw questions of salvage occurring between the low and high water marks, and questions of damage done by foreign vessels to British vessels or navigational aids in

[1] See Maxwell, p. 63.
[2] See *The Jack Park*, (1802) 4 C. Rob. 308, 313.
[3] See Roscoe, *Practice*, p. 232. [4] Responsibility of Shipowners Act, ˣ1813.
[5] Responsibility of Shipowners Act, ˣ1813, §7.
[6] See, *e.g.*, *General Iron Screw Collier Co. v. Schurmanns*, (1860) 1 J. & H. 180.
[7] See *infra*, pp. 178–80.

any 'Harbour, Port, River or Creek', come within the Admiralty jurisdiction, concurrently with any of the Courts of Record at Westminster.[1] This was a particularly remarkable gain because it gave to Admiralty a territorial jurisdiction which had been explicitly forbidden to it by the statutes of Richard II,[2] and restored even the jurisdiction once wrested from Admiralty in *Sir Henry Constable's Case*;[3] even more, it placed the Admiralty Court, which was not officially a court of record[4] (even though it possessed virtually all of the attributes of such a court), upon an equal jurisdictional footing with the common law. In 1819 a statute permitting seamen to sue for wages before Justices of the Peace included a provision giving the Admiralty Court appellate jurisdiction in matters arising under the Act, with certain evidentiary requirements.[5] Further appellate jurisdiction, concurrent with the Admiralty Court of the Cinque Ports, was given in 1821 in cases of awards by the Cinque Ports Salvage Commissioners, together with concurrent jurisdiction to order the sale of salved property to satisfy such awards.[6] The Admiralty Judge was given the power of summary adjudication in claims for bounty money in putting down the slave trade by an Act of 1824.[7] And in 1825 an Act made the exercise of Admiralty jurisdiction in cases of restraint more easy of application, for unless the part-owner bringing suit in the Admiralty Court (to restrain his ship's departure on a proposed voyage until the majority owners gave a bond for her safe return) could prove the amount of his shares, only the Court of Chancery had power to enjoin the sailing pending security;[8] the Registry Act arbitrarily divided ownership of every registered British vessel into sixty-four shares and compelled entry of the number of sixty-fourth shares with each owner's name upon the back of every Certificate of Registry,[9] and also restricted the number of owners of any one registered vessel to a maximum of thirty-two.[10] Thereafter, the part-owner of any registered vessel wishing to sue in Admiralty for restraint needed

[1] Frauds by Boatmen, etc., Act, ˣ1813, §§6, 7.
[2] See Admiralty Jurisdiction Acts, ˣ1389, 1391.
[3] (1601) 5 Co. Rep. 106a; see *supra*, pp. 6, 8.
[4] A. Browne, vol. 2, p. 417.
[5] Wages of Merchant Seamen Act, ˣ1819, §§1, 2.
[6] Cinque Ports Act, 1821, §§4, 20.
[7] Slave Trade Act, 1824, §28. [8] Holt, pp. 204–5.
[9] Act for the Registering of British Vessels, 1825, §§32, 2.
[10] Act for the Registering of British Vessels, 1825, §33.

only to submit a Certificate of Registry in order to give the Court jurisdiction.

The personal regard of the legal profession for Lord Stowell was far from the only advantage which he gave to the Admiralty Court; more important were the decisions in which he effectively increased the Court's jurisdiction. Stowell's decision in *The Favourite*,[1] given only months after his appointment to the bench, brought international admiration; he held in that case that despite the maritime nature of a shipmaster's service, his claim for wages was (according to the course of earlier prohibitions) non-maritime and therefore actionable only at common law; but, by way of dictum, he upheld the ability of the master to sue 'surplus and remnants' [unclaimed proceeds] remaining in the Admiralty Registry after sale by the Court, permitting recovery upon such a wage claim by the master where the suit was uncontested.[2] The effect of this decision was to found, in certain cases, an Admiralty jurisdiction over non-maritime claims. Soon thereafter in the United States, where masters did not until 1968 enjoy a maritime lien for wages,[3] Stowell's dictum in *The Favourite* was relied upon to establish a similar Admiralty jurisdiction.[4] Materialmen [ship's suppliers and repairers] were another class who had no lien upon the ship, and a suit *in rem* by them in the Admiralty Court would have been prohibited; but in 1801, following his earlier line of reasoning, Stowell held that materialmen might sue any balance of proceeds in the Admiralty Registry.[5] And in the same year Stowell gave greater importance to the Court's jurisdiction in hypothecation, holding for the first time that, in cases of extreme necessity, the master might give a bond for the entire cargo[6] as well as the ship and freight.

In a number of decisions spanning his tenure as Judge, Stowell reaffirmed the special status of the mariner to sue in Admiralty; whether the suit was for wages,[7] upon personal injury occasioned by the cruel treatment dispensed by a commercial[8] or prize master,[9]

[1] (1799) 2 C. Rob. 232.
[2] 2. C. Rob. 232, 239
[3] See Price, *L.M.L.*, p. 127; Gilmore and Black, §9–20, p. 512; 46 U.S.C. §606.
[4] *Gardner v. The New Jersey*, 9 Fed. Cas. 1192 (No. 5233) (D. Pa. 1806).
[5] *The John*, (1801) 3 C. Rob. 288, 289; see also Browne, vol. 2, p. 81.
[6] *The Gratitudine*, (1801) 3 C. Rob. 240.
[7] See, *e.g.*, *The Jane and Matilda*, (1823) 1 Hag. Adm. 187.
[8] See, *e.g.*, *The Agincourt*, (1824) 1 Hag. Adm. 271.
[9] See, *e.g.*, *Die Fire Damer*, (1805) 5 C. Rob. 357.

or for a host of other specific causes, the seaman was [and is] considered a 'ward' of Admiralty.[1] This was not only because of his 'thoughtless character and ignorance'[2] which was provided for by automatically setting aside any statement or document in which the seaman purported to forfeit any claim or remedy for the recovery of his wages,[3] but also because the mariner was 'apt to be choleric in temper, and . . . rash and violent in language and conduct.'[4] The Admiralty Court therefore acted *in loco parentis* toward the seaman, not only protecting, as above, but sanctioning chastisement as well.[5]

Stowell's decisions also affected the Court's procedure, as, for example, the warrant's effect upon tackle previously removed from the ship;[6] other decisions pertained to evidence, as in the proof of necessity to hypothecate in order to uphold a bottomry bond;[7] but Stowell's most telling decisions, as far as development of the Admiralty Court was concerned, were those regarding the Court's jurisdiction—and not all of those decisions had the effect of increasing the cognizance of Admiralty.[8]

Alone, Lord Stowell's decisions tending toward a greater Admiralty jurisdiction could have had no effect. The other vital element was a passiveness on the part of the common lawyers which permitted the enlargement of the jurisdiction rather than strangling it with prohibitions. The reasons for this tolerant attitude appear to be diverse; probably the principal and least complex reason was that when Stowell came to the bench the Admiralty Court had been semi-dormant for well over a century, and was no longer seen as a threat to the jurisdiction of the common law; conversely, the little jurisdiction then exercised by Admiralty was not coveted by the common lawyers. This seems to be borne out by Browne, who commented that, in his day, 'the same irrational jealousy of the admiralty doth not exist'.[9] Then too, having bitten off one particular piece of the Admiralty jurisdiction, the courts of common law had undergone a severe attack of indigestion;

[1] See *The Juliana*, (1822) 2 Dod. 504; see also *Ramsay v. Allegre*, 12 Wheat. (25 U.S.) 611 (1827).
[2] Mr Justice Johnson in *Ramsay v. Allegre*, 12 Wheat. (25 U.S.) 611, at 620.
[3] See *The Juliana*, *supra*, n. 1.
[4] Conkling, p. 312.
[5] See, *e.g.*, *The Lowther Castle*, (1825) 1 Hag. Adm. 384.
[6] See *The Alexander*, (1811) 1 Dod. 278.
[7] See *The Nelson*, (1823) 1 Hag. Adm. 169.
[8] See *The Portsea*, (1827) 2 Hag. Adm. 84.
[9] A. Browne, vol. 2, p. 81.

this occurred when the common lawyers extended the principle that no contracts made on land were cognizable in Admiralty to include contracts involving seamen's wages. These claims were usually heard summarily in the Admiralty Court, the proceedings being further expedited by a joinder of the entire crew of a given ship in a single action *in rem*;[1] but the common law courts could not proceed *in rem*, could not give summary relief, and could not join several plaintiffs in the same action;[2] the resulting chaos, with the overburdening of court dockets and delay of many voyages, forced the common lawyers to recant in humiliation, and the jurisdiction of Admiralty over suits for seamen's wages was finally admitted by the courts of common law.[3] Memories of that experience may have encouraged the common lawyers in Stowell's day to let sleeping dogs lie.

Certainly any apathy of the common law courts that may have been evident at the dawn of the nineteenth century did not serve to lull the wariness of the civilians (as they continued to warn of the dangers of placing contracts and stipulations under seal[4]), nor had the earlier forays upon the Admiralty jurisdiction been allowed to lapse from memory (as the common lawyers were freely criticized for previously applying a one-sided logic to the question of the proper contract jurisdiction in Admiralty).[5] In Stowell's time, however, the common lawyers even seemed willing to accept reasonable arguments for the extension of jurisdiction by Admiralty over rivers and harbours,[6] the previous restriction of which was still being denounced by the civilians as a 'greater mischief' than the seizure of the contract jurisdiction.[7]

It must also be submitted that Stowell's decisions, though they tended on the whole toward an enlargement of the Admiralty jurisdiction, probably created no apprehension amongst the common lawyers. Indeed, they had reason to feel content, for in some decisions Stowell more than gave the common law its due; thus in *The Rendsburg*,[8] he for the first time applied the common law doctrine of *quantum meruit* to contracts cognizable in Admiralty, and in *The Frances*, he established the principle that the Admiralty Court would decline to adjudicate questions within its jurisdiction

[1] See A. Browne, Vol. 2, p. 85; see also Maxwell, p. 8.
[2] See Maxwell, p. 8.
[3] A. Browne, vol. 2, p. 85.
[4] See *id.*, p. 96.
[5] *Id.*, p. 95.
[6] See Frauds by Boatmen, etc., Act, 1813, §7.
[7] A. Browne, vol. 2, p. 93.
[8] (1805) 6 C. Rob. 142.

where the matter might be more directly dealt with by a court of common law;[1] and, perhaps less surprisingly, Stowell saw fit to apply common law maxims in the increasing number of cases requiring statutory interpretation—*e.g.*, '*de minimis non curat lex*', applied to a technical breach of the revenue laws.[2] It would seem, therefore, that it was not only the respect of the common lawyers for the wisdom and integrity of Stowell, but also their satisfaction that to some degree common law principles were being acknowledged and even applied in the Admiralty Court which, toward the end of Stowell's judgeship, enabled the observation that: 'if a party, having a good ground of prohibition, shall, nevertheless, suffer the cause to proceed to a judgment upon its merits in the Court of Admiralty, the courts of common law will not interfere afterwards . . .'[3]

At the same time that Lord Stowell pondered and decided upon the questions of English Admiralty jurisdiction, many of the same questions were under heated consideration on the western side of the Atlantic. Law which had become law in other nations and under other codes had been in force in the English Admiralty Court for centuries,[4] and, from its inception, the Admiralty jurisdiction in America had been similarly governed; but even in admitting this, it was necessary to admit that the Admiralty Law of the United States, having been transplanted largely from the British system of Vice-Admiralty courts in the colonies, was virtually identical, in most respects, to the Admiralty Law of England.[5] Thus it was held in one of the State Courts of Admiralty established after the Declaration of Independence that the statutes of Richard II governed in the Admiralty of the new Nation,[6] and during the period of government under the Articles of Confederation, some States even went so far as to enact 15 Ric. 2, c. 3, as domestic law.

Later, when the prime grant of Admiralty jurisdiction was written into the Constitution of the United States as an exclusively Federal matter,[7] there arose the question whether the Admiralty jurisdiction of the new Federal District Courts could be as broad as the Colonial Vice-Admiralty jurisdiction had become just prior

[1] (1820) 2 Dod. 420, 431–2.
[2] Holt, pp. 289–90.
[3] See Roberts, p. 1.
[4] See *The Reward*, (1818) 2 Dod. 265.
[5] See A. Browne, vol. 2, p. 29.
[6] *Clinton v. The Brig Hannah*, 5 Fed. Cas. 1056 (No. 2898) (Adm. Ct. Pa. 1781).
[7] Article III, §2, cl. 1.

to the Revolution. The issue was settled in the first Admiralty appeal to the Supreme Court of the United States,[1] in which it was held that each of the District Courts possessed all of the powers of any of the previous Vice-Admiralty Courts. Prohibitions could also issue from the Supreme Court to restrain the exercise of Admiralty jurisdiction by an overzealous District Judge,[2] but the power had to be used with extreme discretion until the many remaining jurisdictional questions had been resolved by the highest tribunal.

The men most responsible for evolving, through judicial consideration, the American Admiralty jurisprudence were Chief Justice John Marshall and Associate Justices Joseph Story and Bushrod Washington of the United States Supreme Court, Chancellor James Kent of New York, Judge Ashur Ware of the United States District Court for Maine, and (in a later era) Judge Addison Brown of the U.S. District Court for Southern New York.

It is Mr Justice Story, a contemporary of Lord Stowell, who was undoubtedly the greatest champion of Admiralty Law in the United States. Born in Marblehead, Massachusetts, in 1779, Story was precocious enough to gain a scholarship to Harvard College and take his degree at the age of nineteen; he studied law in Marblehead and Salem offices, and served as a Representative both in his State Legislature (1805–7) and in Congress (1808–9), then becoming Speaker of the Massachusetts House in 1811; he was appointed to the Supreme Court by President Madison in 1812 at the age of thirty-two, and served until his death in 1845; in 1829 he became Dane Professor of Law in Harvard University, a post which he also held until his death.[3] Story versed himself in the civil law, and was a practitioner of Admiralty before his appointment as Associate Justice; in Admiralty causes, therefore, it is not surprising that he outshone even the brilliant Marshall, who was fond of saying: '[B]rother Story here can give us the cases, from the Ten Tables down to the latest term-reports.'[4] Story's greatest effect upon the development of American Admiralty was not, however, as an Associate Justice of the Supreme Court, but as Circuit Justice for the First Judicial Circuit,

[1] *Glass v. The Sloop Betsey*, 3 Dall. (3 U.S.) 6, 15 (1794).
[2] *United States v. Peters*, 3 Dall. (3 U.S.) 121 (1795).
[3] *D.A.B.*; Dunne, p. 240 *et seq.*
[4] Dunne, p. 247.

comprising the New England States of Maine, New Hampshire, Massachusetts and Rhode Island. In this capacity Story sat as an appellate judge in the Circuit Court, which was intermediate between the District Courts in the Circuit and the Supreme Court of the United States; occasionally, even though a member of his nation's highest judicial tribunal, Story would have the opportunity as Circuit Justice to hear Admiralty causes at the instance level, sitting in relief for a District Judge. It is highly ironic that, like Lord Stowell, Story earned his great reputation as an adjudicator of Prize causes—during the War of 1812 he condemned English prizes in America while Stowell condemned American prizes in England.

The history of the Admiralty jurisdiction in England was vital knowledge to Story, to whom fell the task of defining the Admiralty jurisdiction in America; his learning in Admiralty was great, as was his respect for Stowell's decisions in his later years on the bench—both points being well illustrated by his judgment in *The Draco*.[1] His knowledge was put to excellent use; he began to lay the foundation of the American Admiralty jurisdiction in contract in *The Emulous*,[2] and he expanded upon it in his greatest decision, *DeLovio v. Boit*, which is to this day the keystone of Admiralty jurisprudence in America. The basic question in *DeLovio v. Boit*[3] was whether policies of marine insurance were cognizable in Admiralty as maritime contracts; though it had long been established in England that despite their maritime character policies of marine insurance were actionable only at common law,[4] Story reasoned that the adoption of the English common law by the United States did not import those decisions by the common law courts which had the effect of restraining Admiralty from the exercise of jurisdiction over truly maritime matters, and that, likewise, the Statutes of Richard II were of no force against the Constitution's grant of jurisdiction in 'all civil cases . . . admiralty and maritime'.[5] Not only is Story's opinion in *DeLovio* cited by modern English Admiralty textwriters for its historical exposition of the English Admiralty jurisdiction,[6] but, as will later be seen, it forms the basis of the English line of

[1] 7 Fed. Cas. 1032 (No. 4057) (C. C. Mass. 1835).
[2] 8 Fed. Cas. 697 (No. 4479) (C. C. Mass. 1813).
[3] 7 Fed. Cas. 418 (No. 3776) (C. C. Mass. 1815).
[4] See A. Browne, vol. 2, pp. 82–3.
[5] Article III, §2, cl. 1.
[6] See, *e.g.*, Roscoe, *Practice*, intro., p. 2, n. (*c*).

decision on the subject of maritime liens;[1] and, together with his later opinion in *The Nestor*,[2] Story's rationale in *DeLovio* gives the theory of actions *in rem* in United States Admiralty.

Judges whose courts or circuits were located in centres of maritime commerce followed Justice Story's lead in varying degrees, slowly extending the Admiralty jurisdiction in America to cognizance of matters which, though marine in origin, were yet viewed by some as subjects proper for adjudication only at common law. But there was one who had the opportunity to act, and also the greatest ability in and thirst for knowledge of civil and Admiralty law possessed by any American judge—Ashur Ware.

Ware was born in Sherburne, Massachusetts, in 1782. He took his degree at Harvard College in 1804, was appointed a tutor in 1807, and became Professor of Greek at Harvard in 1811. He resigned his chair in 1815 and thought to prepare for the ministry, but decided instead upon the bar and studied law in Cambridge offices. He soon became a political writer and speaker of great renown in New England, and was an agitator for the separation of Maine, then a District of Massachusetts; when the battle was won he became, in 1820, the first Secretary of State for the State of Maine. In 1822 he was appointed Judge of the United States District Court for Maine—an appointment roundly condemned as 'political' and unqualified—but his classical mastery of Roman Law and his scholarly learning in the civil law, when given an opportunity for expression in Admiralty causes, soon brought him national recognition as the foremost maritime legal authority, and his reports were published and cited accordingly. He enjoyed one of the longest judicial tenures in American history—44 years—and resigned from the bench in 1866. He died in 1873.[3] He is perhaps best remembered today not only for his great legal scholarship, but, like Dr Lushington, also for his unremitting efforts to better the lot of the ordinary seaman.

Of all Ware's great decisions, his most influential was probably *The Rebecca*,[4] in which he delivered the finest exposition of the history and jurisprudence of the principle of limitation of liability which exists in the English language.[5] It has been held by the

[1] See *infra*, pp. 156–7.
[2] 18 Fed. Cas. 9 (No. 10126) (C. C. Me. 1831).
[3] *D.A.B.*; *W.W.W.*; Talbot, pp. 409–13.
[4] 20 Fed. Cas. 373 (No. 11619) (D. Me. 1831).
[5] Discussed *infra*, p. 178.

Supreme Court to be the foundation of American Admiralty law in this regard,[1] and citation of *The Rebecca* is not uncommon in the present day.[2] But in virtually every maritime decision, Ware undertook to show the relationship between Admiralty and the civil law[3]; indeed, Ashur Ware was America's foremost civilian, characterized by Mr Justice Story as the 'ablest and most learned' mind of United States Admiralty.[4]

The early drift of U.S. Admiralty decisions was clearly toward expanded jurisdiction, illustrated by Judge Ware's holding in *Steele v. Thacher*[5] that a suit might be maintained in Admiralty for the wrongful abduction of a child by a shipmaster, the rationale being that a Court of Admiralty could award damages for any tort committed principally upon the sea. And because the judicial expansion of jurisdiction went much further in a shorter period of time than in England, the reaction of those who sensed a threat to the common law was also more swift; Justice William Johnson spoke for many in declaring: 'I think it high time to check this silent and stealing progress of the admiralty in acquiring jurisdiction to which it has no pretensions.'[6] This particular statement so provoked Dr Henry Wheaton, Reporter of the Supreme Court of the United States, that he resorted to the unusual device of a long note following his report of the case, in which he undertook to rebut Johnson's opinion.[7] While it was perhaps the last public expression of that blunt view—essentially the same as that of Coke—the words of Mr Justice Johnson were a clear warning that the old enmity could be prodded into awareness once again.

With the great similarity between English and American Admiralty Law, and the early establishment of reciprocity in the enforcement of Admiralty judgments,[8] it soon became common for reasoning and precedents established in one country to be cited as authority in the other, and the balance seems, probably because of the greater number and variety of decisions, to have gone to the use of American authority in England. Not only were

[1] *Norwich Company v. Wright*, 13 Wall. (80 U.S.) 104, 116 (1871).
[2] *In re. Independent Towing Company*, 242 F. Supp. 950, 951 (E.D. La. 1965).
[3] See, *e.g.*, *Lane v. Townsend*, 14 Fed. Cas. 1087 (No. 8054) (D. Me. 1835).
[4] Talbot, p. 418.
[5] 22 Fed. Cas. 1204 (No. 13348) (D. Me. 1825).
[6] *Ramsay v. Allegre*, 12 Wheat. (25 U.S.) 611, 614 (1827).
[7] *Id.*, at pp. 640–3.
[8] See *Penhallow v. Doane's Administrators*, 3 Dall. (3 U.S.) 54 (1795).

American opinions heavily cited judicially,[1] but occasionally it also appeared that an argument presented to the Admiralty Court was almost entirely grounded upon American precedent.[2] In the matter of authority common to both lands, one visible pattern soon emerged as a permanent feature; there can be no stronger support for any original proposition in Admiralty than a joint citation of Stowell and Story in agreement, whether by counsel or by other great Admiralty judges, such as Ware[3] and Lushington.[4]

With a reputation which took firm root in Admiralty Law the world over, it is little wonder that Lord Stowell has come to be regarded as the greatest of the judges of the English Court of Admiralty; yet it is not entirely superfluous to examine reasons for that reputation, and to look at a few decisions which tell something of the man himself.

In fairness to his several illustrious predecessors, it must be pointed out that the availability of these decisions to the profession at large gave Stowell a tremendous advantage, for the first regular reports of causes determined in the Admiralty Court—Sir Christopher Robinson's—commence with Stowell's accession to the bench. As Chancellor Kent observed: 'The English maritime law can now be studied in the adjudged cases, with at least as much profit, and with vastly more pleasure, than in the dry and formal didactic treatises and ordinances professedly devoted to the science.'[5]

The names of Zouche, Jenkins, Dunn, Hedges, Penrice, and even (despite the labour of Marsden) Lewes and Caesar would undoubtedly have been enhanced by the transcription of their judgments in a regular series of reports. It would be dangerous, however, to place too heavy an emphasis upon the mere existence of reports of Stowell's decisions, for the quality of reporting in that day could and did vary; an edition, published in 1801, of Admiralty reports for the years 1776–9 was later held 'not executed in a satisfactory manner',[6] and even in the latter half of the nineteenth century, when a precedent was offered, it became necessary

[1] See, *e.g.*, *R. v. Keyn*, (1876) 2 Ex. D. 63 [C.C.R.].
[2] See, *e.g.*, argument of Gainsford Bruce in *The Alexandria*, (1872) L.R. 3 A. & E. 574, 577–9.
[3] See, *e.g.*, *Polydore v. Prince*, 19 Fed. Cas. 950 [1 Ware 411] (No. 11257) (D. Me. 1837).
[4] See, *e.g.*, *The Fusilier*, (1865) Br. & Lush. 341, 347.
[5] 3 Kent, p. 19.
[6] Reddie, vol. 1, intro., p. viii.

to estimate which of two earlier reports of the case concerned was the more accurate.[1] It is possible, therefore, that Stowell had a good deal to overcome as well as a great deal to gain from the publication of the Admiralty reports.

If Lord Stowell did have a chronic shortcoming as Admiralty Judge, it was perhaps a most understandable one: an intense fear of prohibition, which restrained him frequently from exercising jurisdiction over causes which could very reasonably be argued to have been within the legitimate compass of Admiralty. It cannot fail to strike the reader of many of Stowell's judgments how frequently he referred to the possibility of prohibition if he should allow the cause to proceed. The remarkable result of this phobia was that Stowell was never once prohibited in his entire judgeship;[2] and, in at least one instance, he candidly admitted fear of prohibition as a factor in his decision to refuse to entertain a suit in the Admiralty Court.[3] If this seems a new and isolated criticism of Stowell, it can be said that a similar observation was made in even stronger terms by no less an authority than Dr Lushington, who commented in the course of his judgment in *The Milford* that: 'Lord Stowell always stood in awe of a prohibition, and therefore, as I think, was too abstinent in taking any step which might, by possibility, expose him to such interference.'[4]

It was in considering the jurisdiction of the Admiralty Court to entertain claims by foreign suitors that Dr Lushington made the remark quoted above; and it is certainly true, whether from fear of prohibition or for less obvious reasons, that Lord Stowell showed a particular reluctance to entertain foreign claims, and especially so where both parties to the suit were foreign.[5] At a time in later years when American Courts of Admiralty were in the process of establishing a more open jurisdiction over suits between foreign parties,[6] the earlier decisions of Lord Stowell in this area were viewed with regret; but it is probable that American judges still harboured some bitterness at decisions of Stowell which dealt with the claims of American seamen in the

[1] See remarks of Sir R. Phillimore *re The Volant* in *The St. Olaf*, (1869) L.R. 2 A. & E. 360.
[2] See Advocate's argument in *The Neptune*, (1835) 3 Kn P.C. 94, 106.
[3] *The Courtney*, (1810) Edw. Adm. 239, 241.
[4] (1858) Swab. 362, 366.
[5] See, *e.g.*, *The Two Friends*, (1799) 1 C. Rob. 271, 280.
[6] See, *e.g.*, *The Bee*, 3 Fed. Cas. 41 (No. 1219) (D. Me., 1836).

High Court of Admiralty of England—indeed an American textwriter commented upon two particular cases[1] (decided at a time of great political tension between the two nations), in one of which Stowell refused to grant a wage recovery in accordance with the terms of a United States statute, while permitting a wage recovery in the other for a transaction illegal under the laws of the United States.[2]

It is also possible that Admiralty Courts in the great ports of northeastern America were adversely influenced by some of Stowell's decision involving the difficult problem of the slave trade; whether decisions in this area were especially agonizing for Lord Stowell it is impossible to say, but it is unfortunately true that in at least one case his decision on the law permitted a salved slaver to carry on her trade without arrest,[3] and that in another his decision was a strange precursor to that of Chief Justice Roger Taney in the case of Dred Scott, holding that a female slave—appraised value £125—had not become free by reason of her residence in a non-slavery territory, and that: 'no injury is done her by her continuance in a state of slavery . . .'[4] When Story rendered his great decision against the slave trade in *La Jeune Eugenie*,[5] his greatest and most painful difficulty, after a lengthy analysis, was the necessity of departing from Stowell's slave trade decisions.

Stowell was likewise prone to the prejudice of his time against working women, describing the wages suit of a lady seacook as 'a claim, which I have no particular wish to encourage, for man's work done by a female . . .'[6] Yet this same judgment, in *The Jane and Matilda*, is wonderfully illustrative of the qualities that made Stowell a truly great judge: his scholarship in the Law of Admiralty; his warm wit, especially present in a case with humorous aspects; and his wisdom in balancing the interests, often diverse, represented in each cause. If he evinced certain shortcomings, they were of the fundamentally human kind, and characterized the time as well as the man. Over all must stand his achievements

[1] *The Courtney*, (1810) Edw. Adm. 239.
The Maria Theresa, (1813) 1 Dod. 303.
[2] Conkling, pp. 29–30, 31.
[3] *The Trelawney*, (1801) 3 C. Rob. 216n.
[4] *The Slave*, GRACE, (1827) 2 Hag. Adm. 94, 100.
[5] 26 Fed. Cas. 832 (No. 15551) (C. C. Mass. 1822).
[6] *The Jane and Matilda*, (1823) 1 Hag. Adm. 187, 188.

as the architect of the modern Laws of Prize and Salvage,[1] as a champion of the equitable powers of Admiralty,[2] and as a man of dedication and endurance, who during his last years on the bench was so weak in sight and voice that he had to have Dr Dodson or Sir Christopher Robinson read his judgments aloud in Court.[3] It is uniquely fitting that the greatest tribute paid to Stowell in his lifetime should have come from a letter written to him by the man perhaps best qualified of any then living to assess his contribution to the world of law, Mr Justice Story: 'In the excitement caused by the hostilities then raging between our countries, I frequently impugned your judgments . . . , but on a calm review of your decisions after a lapse of years . . . I have taken care that they shall form the basis of the maritime law of the United States . . .'[4] And so from the retrospective vantage of the present day, it is not difficult to agree with Holdsworth that 'The greatest of all the civilians in the whole history of English law is William Scott, Lord Stowell.'[5]

Upon the retirement of Lord Stowell, Sir Christopher Robinson became the Admiralty Judge. Robinson was born in 1766, and attended University and Magdalen Colleges, Oxford, graduating D.C.L. in 1796; in that same year he became a Fellow of Doctors' Commons; he was the first regular reporter of cases in the High Court of Admiralty (from 1798 until 1808), and a sometime Member of Parliament; he became King's Advocate in 1809, and served as Judge of the Admiralty Court from 1828 until his death in 1833.[6]

This five-year period in the Court's history was a completely tranquil one, business being solely limited to instance matters, and there being very little of it at all.[7] The jurisdiction and practice of the Court remained static, though quite inexplicably a new edition of a long-outdated treatise, the *Praxis Supremae Curiae Admiralitatis*, was published in 1829. This book, usually known as *Clerke's Praxis*, reflected the Admiralty practice and procedure which basically obtained in the Court during the Elizabethan era; the 1829 edition was merely a reprint of one published in the

[1] See Roscoe, *Practice*, pp. 127–8.
[2] See *The Minerva*, (1825) 1 Hag. Adm. 347.
[3] *D.N.B.*
[4] Reproduced in Holdsworth, *H.E.L.*, vol. 13, p. 679.
[5] *Id.*, p. 668.
[6] *Id.*, pp. 689–91; *D.N.B.*
[7] See *supra*, p. 21.

previous century, and, taking no account of the intervening change in emphasis from the proceeding *in personam* to that *in rem*, was wholly inferior to the edition of Dr Browne's work published in 1802.

Near the end of Robinson's office as Admiralty Judge, there was an alteration in the appellate structure of the civil law. The powers of the High Court of Delegates, which hitherto had heard all Admiralty and Ecclesiastical appeals, were transferred to the Privy Council,[1] and a Judicial Committee of the Privy Council was created to take cognizance of future appeals, including those from the Vice-Admiralty courts abroad, which had previously been taken to the High Court of Admiralty.[2] In terms of efficiency a change was certainly justified, for a separate commission had previously been required for each of these appeals 'to the King in Chancery', appointing *iudices delegati*—thus requiring, technically, a complete reconstitution of the Court of Delegates for each case brought before it.[3]

Appellate procedure, however, was basically unchanged; appeal lay from the Court of Admiralty only upon a definitive sentence[4] [final judgment] or a 'grievance' [material error], and the appeal was required to be specifically drawn in the latter case, whereas it might be asked *viva voce* in the former.[5] Appeal had to be interposed within ten days of the error, and immediately upon the sentence if asked orally, otherwise in writing within ten days.[6] The appellant was required to give fresh security for the appeal, whereupon he prayed and was granted apostles [the instance record], with a date set by which he had to retrocertify to the Judge the steps taken to prosecute the appeal, failing which the sentence would be executed.[7] With the transfer of appellate jurisdiction from the Court of Delegates to the Privy Council, the apostles were no longer sent to the Lord Chancellor for inscription and commissioning of delegates, as formerly.[8] The cause then proceeded summarily, with an inhibition of lower proceedings and a citation to the defence, an appellatory libel and answer, perusal of the apostles, hearing and sentence.[9] It should be noted

[1] Privy Council Appeals Act, 1832, §3.
[2] Judicial Committee Act, 1833, §§1, 2.
[3] See A. Browne, vol. 2, p. 29; Senior, p. 52.
[4] A. Browne, vol. 2, p. 435; also Admiralty Court Act, 1840, §17.
[5] See A. Browne, vol. 2, pp. 435–6.
[6] *Id.*, p. 436.
[7] *Id.*, pp. 437–8.
[8] *Id.*, pp. 438–9.
[9] *Id.*, pp. 439–41.

that appeals in Admiralty were and are technically trials *de novo*, in that new evidence may be received; but a decision based upon the legitimate discretion of the instance Judge will not generally be altered by the appellate court,[1] a rule preserved in the United States as well.[2]

Sir Christopher Robinson, and his successor, Sir John Nicholl, had equally short tenures as Admiralty Judge; because of the low ebb of business in the Court under Robinson, however, his judgeship is more difficult to evaluate. The inevitable impression is that his legal thought was dominated by Stowell, with whom he had been closely associated throughout the latter's judicial career; this is not to say that Robinson was not a skilled civilian, or incapable of original thought—his judgment in the case of *The Calypso*,[3] with its fine exposition of the history of salvage, shows the opposite. But Robinson never deviated from the pattern of Stowell's decision, nor did he establish any important new principles in Admiralty Law, though, ironically, his surrogate did establish the award of salvage to captors of royal fish.[4] In fairness, it must be added that Robinson was denied the vehicle which chiefly brought Stowell to greatness, in that there were no Prize causes before the Court during his judgeship; he is, nonetheless, perhaps best viewed as an adequate Admiralty Judge, unblessed with the brilliance of his predecessor.

Sir John Nicholl was born in 1759; he was educated at and became a Fellow of St John's College, Oxford, graduating D.C.L. in 1785, and was admitted to Doctors' Commons in the same year; he served in Parliament from 1802 to 1832, and was notable for his opposition to Roman Catholic emancipation; he succeeded Stowell as King's Advocate in 1798, becoming Admiralty Judge upon Robinson's death in 1833 and holding office until his own death in 1838; he was also the first Admiralty Judge of the nineteenth century to be Dean of the Arches Court, a post which he held from 1809 until 1834.[5]

[1] See *The Clarisse*, (1856) Swab. 129, 134 [P.C.]; but *cf. The Almizar*, [1970] 1 Ll Rep. 67 [App.].
[2] See *Yeaton v. United States*, 5 Cranch (9 U.S.) 281, 283 (1809); and, *cf. McAllister v. United States*, 348 U.S 19 (1954).
[3] (1828) 2 Hag. Adm. 209, esp. pp. 217–18.
[4] Dr Phillimore, in *Lord Warden of Cinque Ports v. The King in his Office of Admiralty &c.*, (1831) 2 Hag. Adm. 438.
[5] Holdsworth, *H.E.L.*, vol. 13, pp. 691–6; *D.N.B.*

One of Nicholl's first tasks as Admiralty Judge was to give testimony before a select committee of the House of Commons which had been appointed to evaluate the usefulness of the Admiralty Court and to make recommendations for its improvement. Other principal witnesses included Sir Herbert Jenner, Dr Lushington, and H. B. Swabey, the Deputy Admiralty Registrar. As might be expected, testimony by the civilians ran to complaints of the imperfections in the Court's jurisdiction and recommendations that the jurisdiction given to the Judge by his patent—*super altum mare*—and in all rivers up to the first bridge within the range of tidal flux—be realized, and that the Court be given cognizance of legal title, ship mortgages, charter-parties, average, etc.[1] More surprisingly, the testimony of common lawyers who appeared as witnesses was generally in support of that of the civilians, and Sir Nicholas Tindal, Lord Chief Justice of the Common Pleas, was among those who advocated an enlargement of the jurisdiction of the Admiralty Court.[2] The Committee's final recommendations were, concerning the Court's jurisdiction, a great triumph for the civilians; they were also most portentous for the future of the civil law in England, as will later be seen.

It may be fairly said that Nicholl was a stronger Judge than his immediate predecessor; though a close associate of Stowell's over an even longer period than Robinson, Nicholl seems to have been more inspired than dominated by that relationship. He had a sense of the prerogative power, particularly in pronouncing contempt,[3] and was never hesitant in exercising the Admiralty jurisdiction over maritime claims, though, as in *The Neptune*,[4] where he claimed the existence of a maritime lien for materialmen upon the proceeds of an action *in rem* despite the lack of such a lien on the *res*, he occasionally suffered reversal by the Judicial Committee.

It fell to Nicholl to render the classic and definitive judgments upon the Admiralty jurisdiction of droits; in the course of one incredibly complicated case, *R. v. Forty-Nine Casks of Brandy*,[5] he was required to make a determination upon each of the items according to its topographic position at recovery; his holding was

[1] See, *e.g.*, testimony of Wm. Fox, Proctor in Admiralty, in Parliamentary Paper [1833] (670) vii. (H.C. 15 August), p. 68.
[2] See Parl. Paper [1833] (670) vii. (H.C. 15 August), p. 135.
[3] See, *e.g.*, *Wyllie v. Mott & French*, (1827) 1 Hag. Ecc. 28 [Arches].
[4] (1834) 3 Hag. Adm. 129; *rev'd*, 3 Kn. P.C. 94. [5] (1836) 3 Hag. Adm. 257.

that those casks picked up on the high seas, those found beyond low water, and those found floating on the ebb tide above the low-water mark—never having bottomed—were properly droits of Admiralty, whereas those bobbing on the ebb tide and occasionally striking bottom, and those grounded on the ebb tide, though not necessarily high-and-dry, were wreck within the right of the lord of the manor. But Nicholl himself effectively overruled this last proposition in the subsequent case of *R. v. Two Casks of Tallow*, where he said: 'I cannot agree . . . that things having once touched the ground thereby necessarily become the property of the lord of the manor'[1]—a decision which later enabled Dr Lushington to hold that in the case of a vessel stranded on the ebb tide and seized by the bailiff for the lord of the manor, but retaken on the flood tide and condemned as droits of Admiralty, the lord of the manor had no claim upon the proceeds of the sale of the vessel in Admiralty.[2]

Two of Nicholl's decisions were of particular importance to the later development of the substantive Law of Admiralty; in one of these cases he pioneered the right-of-way of sailing vessels over steamships,[3] a principle today enshrined in the International Rules of the Nautical Road[4] and applied by Admiralty Courts the world over. In the other case, Nicholl held for the first time that judgment in an action *in rem* might be decreed and enforced in excess of the value of the *res*;[5] the subsequent impact of this decision has been very considerable,[6] and it is greatly to be regretted that Nicholl neither cited authority nor gave reasoning in its support.

The death of Sir John Nicholl saw an end to the era of Lord Stowell's direct influence upon the development of the English Court of Admiralty; through Sir Christopher Robinson, whom he outlived, Stowell's personal influence was transmitted after the termination of his own service upon the bench; through Nicholl, though in lesser degree, Stowell's personal influence survived his own death.

The era of Stowell had seen the laying of a foundation—the next would see both construction and collapse.

[1] (1837) 3 Hag. Adm. 294, 298–9. [2] *The Pauline*, (1845) 2 W. Rob. 358.
[3] *The Perth*, (1838) 3 Hag. Adm. 414.
[4] See 1960 International Rules, Rule 20(a).
[5] *The Triune*, (1834) 3 Hag. Adm. 114. [6] See *infra*, pp. 171–2, 180.